SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 111

WILLIAM M. FERGUSON, ATTORNEY GENERAL FOR THE STATE OF KANSAS, ET AL., APPELLANTS,

vs.

FRANK C. SKRUPA, d/b/a CREDIT ADVISORS.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

INDEX

RECORD PRESS, PRINTERS, NEW YORK, N. Y., DECEMBER 3, 1962

[fol. 1] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Civil Action No. W. 2434

FRANK C. SKRUPA, d/b/a Credit Advisors, Plaintiff,

vs.

KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.

COMPLAINT—Filed June 27, 1961

Comes Now the Plaintiff, Frank Skrupa, Jr. d/b/a Credit Advisors, for his causes of action against the Defendants and each of them alleges and states:

Count I

1. The Plaintiff is an individual and a citizen and resident of the State of Nebraska, his correct post office address being 4503 South 26th Street, Omaha, Nebraska; and said Plaintiff is and at all times material hereto has been doing business under the name and style of "Credit Advisors" as hereinafter more fully set out. The Defendant, Keith Sanborn is a resident of the State of Kansas and the duly elected, qualified and acting County Attorney for the County of Sedgwick, State of Kansas and Defendant William M. Ferguson is a resident of the State of Kansas and the duly elected, qualified and acting Attorney General for the State of Kansas.

2. This action arises under the Constitution of the United States, Article I, Section 10 and Amendment 14, Section 1, as hereinafter more fully appears; and also there is diversity of citizenship between the parties hereto as set out above and the matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

[fol. 2] 3. This action is brought under Title 28 United States Code, Sections 1331, 1332, 2281, and 2284, and is a suit to enjoin the enforcement, operation and execution of a statute of the State of Kansas, Senate Bill 366, 1961 Legislative Session, as being in conflict with the 14th Amendment to the Constitution of the United States, Section 1, and Article I, Section 10, of the Constitution of the United States, and to restrain the defendants, their agents, servants and employees from depriving plaintiff of his property and rights without due process of law, and denying to plaintiff the equal protection of the laws and from enforcing a law impairing the obligation of plaintiff's contracts. Said Kansas Statute is also in conflict with the Constitution of the State of Kansas, Article 2, Section 16, in that the subject of the Bill is not clearly expressed in its title and plaintiff is entitled to an order enjoining enforcement of same on that ground as incidental and ancillary to the substantial federal question herein set out.

4. The 1961 Kansas Legislature passed and the Governor of the State signed an Act known as Senate Bill 366 which reads as follows:

> AN ACT concerning the business of debt adjusting; making certain acts unlawful and prescribing penalties therefor.
>
> Be it enacted by the Legislature of the State of Kansas:
>
> SECTION 1. For the purpose of this act, "debt adjusting" means the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon. Whoever engages in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment: PROVIDED, That the provisions of this act shall not apply to those

situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state.

SECTION 2. This act shall take effect and be in force from and after its publication in the statute book.

[fol. 3] Said act will be or has been published in the official statute book to take effect June 30, 1961, and unless the defendants are restrained and enjoined from enforcing same, this plaintiff will be irreparably injured.

5. The plaintiff, Frank Skrupa, Jr., is the owner of a business known as "Credit Advisors" with offices in Omaha, Nebraska, and Wichita, Sedgwick County, Kansas; and that said business consists of the business of "debt adjusting" as defined by Kansas Senate Bill No. 366 as set out above; and that said business of this plaintiff by said act and statute is prohibited, declared to be a misdemeanor, and subject to fine or imprisonment, or both.

6. The plaintiff has been engaged in the aforesaid business since September, 1958, and has been engaged in said business in Wichita, Sedgwick County, Kansas, since April, 1960, and since opening an office for business in Wichita, Sedgwick County, Kansas, plaintiff has spent in excess of $20,000.00 for capital improvements and expenses to promote his business and as investment for the future prosperity of the business in the Wichita and Sedgwick County area. The Wichita office of the plaintiff handles an amount of money in excess of an average of $15,000 monthly which is distributed among the specified creditors of debtors availing themselves of plaintiff's services. The plaintiff is engaged in a useful and desirable business which is available to persons who are unable to handle their credit problems without outside financial advice. Plaintiff's employees in all mentioned offices, including the Wichita, Sedgwick County area, are bonded in the amount of $25,000.00 protecting debtors and creditors against loss by embezzlement or dishonesty; and neither the plaintiff nor any of the plaintiff's employees engage in any practices

which in any way are contrary to the public welfare, and the business of debt adjusting and particularly the business conducted by this plaintiff is not inherently immoral or dangerous to the public welfare and may not be absolutely prohibited.

[fol. 4] 7. The defendant, Keith Sanborn, the County Attorney of Sedgwick County, Kansas has stated to plaintiff that he will be obligated to enforce the provisions of said Senate Bill No. 366 against this plaintiff and his employees with criminal sanctions; and the defendant William M. Ferguson, Attorney General of the State of Kansas, having overall supervision of criminal prosecutions in the State of Kansas has indicated that he will contend that said Statute is valid and should be enforced unless restrained and enjoined by a court of competent jurisdiction.

8. The plaintiff has a substantial investment in his business in the State of Kansas as more particularly set out above all of which will be substantially destroyed by enforcement of said Senate Bill No. 366. Certain persons and organizations are already refraining from and refusing to do business with plaintiff because of publicity which is being circulated to the effect that said Senate Bill No. 366 will put plaintiff out of business in Kansas. A number of debtors having contracts with plaintiff are refraining from making further payments through plaintiff because they fear plaintiff will be unable to continue servicing contracts upon said Act becoming effective. Threat of enforcement of said Senate Bill No. 366 and the mere existence of said act deny to plaintiff due process of law and equal protection of the laws.

9. Plaintiff has existing and in force in Wichita, Sedgwick County, Kansas, a total of more than 250 contracts, involving the payment through plaintiff's office of more than $500,000.00 with debtors substantially as described in the said Kansas statute and the threat of enforcement and the mere existence of said Act impairs the obligations of both parties to these contracts.

10. Said Senate Bill No. 366 as applied to this plaintiff arbitrarily and unreasonably deprives plaintiff of valuable

property rights without due process of law, unjustly denies plaintiff the equal protection of the laws and impairs the obligation of existing contracts; and therefore said statute of the State of Kansas is void and invalid being contrary [fol. 5] to the 14th Amendment to the Constitution of the United States, Section 1, and contrary to Article I, Section 10, of the United States Constitution.

11. The title to said Senate Bill No. 366 as passed by the legislature of the State of Kansas is:

> "An act concerning the business of debt adjusting; making certain actions unlawful and prescribing penalties therefor."

but the body of the act as set out above absolutely *prohibits* the business of debt adjusting and therefore the subject of the act is not clearly expressed in the title and the act is therefore contrary to the Constitution of the State of Kansas, Article 2, Section 16, which provides:

> "no bill shall contain more than one subject, which shall be clearly expressed in its title . . . "

and said State Constitutional question is incidental and ancillary to the substantial federal question hereinbefore presented and therefore is subject to determination by this court.

12. The plaintiff has no adequate remedy at law from the threatened acts of the defendants and the law which they seek to enforce. Such threatened acts of the defendants are arbitrarily and grossly discriminatory and repugnant to and violate the Constitution of the United States and the State of Kansas and unlawfully invade the rights of the plaintiff and others and unless said defendants are restrained and enjoined from proceedings to enforce said statutes, this plaintiff will suffer from irreparable harm and injury.

Wherefore, the plaintiff prays that a three judge court be convened pursuant to the provision of Title 28 of the United States Code Sections 2281 and 2284; that the defendants and each of them and their officers, agents and em-

ployees and all persons acting in their behalf be temporarily and permanently enjoined from doing and taking any and all action in the enforcement of said Senate Bill No. 366, 1961 Kansas Session Laws; that the defendants and each of them be restrained by the District Judge from proceeding in the enforcement of the above mentioned statute until such time as hearing can be had on plaintiff's request for a temporary injunction; and that plaintiff have such other and further relief as may be fair and equitable together with costs of this action.

[fol. 6] Count II

1 through 10. Plaintiff realleges and incorporates herein paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10 and 11 of Count I as paragraphs 1 through 10 of Count II.

11. This action is brought under Title 28, United States Code, Section 1331, 1332 and 2201 because there is an actual controversy now existing between the parties in respect to which plaintiff needs a declaration by the court of the rights of the parties and the validity of a certain statute of the State of Kansas.

12. Defendants and each of them contend that said Senate Bill No. 366 is wholly valid and not contrary to the aforesaid provisions of the Constitution of the United States and the Constitution of the State of Kansas, all of which this plaintiff specifically denies.

Wherefore, Plaintiff prays that this court enter a declaratory judgment, declaring and adjudging that Senate Bill No. 366, 1961 Kansas Session Laws, is in violation of and contrary to the Fourteenth Amendment to the Constitution of the United States, Section 1, and Article I, Section 10, of the Constitution of the United States and the Constitution of the State of Kansas, Article 2, Section 16, and is invalid and void and that the court further declare that the defendants and each of them, their agents, servants and employees and all persons acting in their behalf, have no right to enforce said statute in any way or to threaten enforcement thereof as against this plaintiff and that the

plaintiff have and recover his costs herein and such other and further relief as is fair and equitable.

Ernest McRae, 1020 Central Building, Wichita, Kansas; Weigand, Curfman, Brainerd, Harris & Kaufman, 830 First National Bank Building, Wichita 2, Kansas, By Donald A. Bell, Attorneys for Plaintiff.

[fol. 7] *Duly sworn to by Ernest McRae, jurat omitted in printing.*

[fol. 8] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

Civil Action No. W-2434

FRANK C. SKRUPA, doing business as CREDIT ADVISORS, Plaintiff,

vs.

KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.

Transcript of Hearing on June 28, 1961, on Application for Temporary Restraining Order

Hon. Delmas C. Hill, Chief Judge, presiding.

APPEARANCES:

Weigand, Curfman, Brainerd, Harris & Kaufman, by Mr. Lawrence Weigand and Mr. Donald A. Bell, 830 First National Bank Building, Wichita 2, Kansas, Appearing for Plaintiff, and Mr. Ernest McRae, 1020 Central Building, Wichita, Kansas, Appearing for Plaintiff.

Mr. Keith Sanborn, County Attorney, Court House, Wichita, Kansas, Appearing Pro Se.

Mr. Charles Henson, State House, Topeka, Kansas, Appearing for the Attorney General.

[fol. 10] Be It Remembered, that on this 28th day of June, A.D., 1961, the above matter coming on for hearing before the Honorable Delmas C. Hill, Chief Judge of the United States District Court for the District of Kansas, the parties appearing in person and/or by counsel as hereinbefore set forth, the following proceedings are had:

* * * * * * *

The Court: I expect the attorneys should give the reporter your appearances, please.

Mr. Weigand: Lawrence Weigand, Donald A. Bell and Ernest McRae for the plaintiff.

Mr. Sanborn: Keith Sanborn, Charles Henson, Assistant Attorney General, R. K. Hollingsworth, Artie Vaughn for the State of Kansas, and Mr. Wilbur Geeding, the Chairman of the unauthorized Practice Committee of the Wichita Bar Association, and Mr. John Boyer, the President of the Wichita Bar Association.

Mr. Henson: If it please the Court, I am Charles Henson, Assistant Attorney General, appearing on behalf of William Ferguson, and we would like to particularly note that our appearance today is merely for purposes of the hearing on the application for a temporary restraining order. We do not intend to by our appearance today concede that we are [fol. 10a] proper parties defendant in this action.

The Court: All right. Counsel for the plaintiff may proceed on the hearing for temporary order.

Stipulations of Fact

Mr. Bell: Your Honor, I might briefly cover anything that might be stipulated prior to any witnesses.

No. 1, do the defendants stipulate that Defendant Keith Sanborn is a resident of Kansas; that he is the duly elected, qualified and Acting County Attorney, and the Defendant William M. Ferguson is a resident of the State and duly elected, qualified and Acting Attorney General?

Mr. Henson: We so stipulate, Your Honor.

Mr. Sanborn: We so stipulate, Your Honor.

Mr. Bell: Do the defendants further stipulate that the 1961 Kansas Legislature passed an act known as Senate Bill No. 366, which is set out in Paragraph 4 to plaintiff's Complaint, and that this will become effective by publication in the Statute Book on June 30th, 1961?

Mr. Sanborn: We will stipulate that it will become effective July 1, 1961, Your Honor.

Mr. Henson: Your Honor, we have not had a chance to read the Complaint in this action; however, on counsel's assurance that the statute is fully set out, correctly set out in the Complaint, why, we will stipulate to that.

Mr. Bell: July 1st is agreeable with us. There is no [fol. 10b] difference.

I believe with those we are ready for the first witness.

FRANK C. SKRUPA, produced as a witness for and in his own behalf, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Bell:

Q. Will you state your name and address for the Court, please?

A. Frank C. Skrupa, Omaha, Nebraska.

Q. You are a resident of the State of Nebraska?

A. Yes, sir.

Q. Are you engaged in business in the States of Nebraska and Kansas?

A. I am.

Q. Would you briefly describe for us the name under which you are operating and the nature of the business?

A. The name under which we operate in both Omaha and Wichita is Credit Advisors, and the nature of the business is financial management of people who are having trouble with consumer debt.

That is, we work out a budgeting program for them and [fol. 11] attempt to help them out over a period of time.

Q. Is it correct to say that in your business you make contracts with debtors, whereby they agree to pay you a

certain amount of money periodically which, for a consideration, you distribute among certain specified creditors in accordance with a plan agreed upon?

A. It is.

Q. Have you read Senate Bill No. 366 which is the subject of this action?

A. I have.

Q. And generally do you consider your business to be within the definition of "debt adjusting" as defined in that Act?

A. I do not.

Q. Well, you consider it to be within the definition as defined in Senate Bill 366, do you not?

A. Yes.

Q. I am not asking you if you consider—

A. (Interrupting) Well, I was under a mistaken opinion there.

Q. Would you tell us briefly how long you have been in this business and when you opened your Wichita office?

A. Why, I have been in the business a little over three years. The office here was opened the latter part of April 1960.

[fol. 12] Q. And since April 1960, will you tell us if you can what you have done to promote this office here and how much money you have invested in the office here?

A. Well, the amount of money invested, not counting this month, has been approximately $24,000.00.

Q. What does that include?

A. Well, that includes salaries, the office, office equipment, and advertising, and such incidentals, and it requires, such incidentals as it requires to run the business.

Q. Can you tell us how much money your office handles, approximately, every month?

A. Well, the average varies but it would be approximately $15,000.00.

Q. We are talking about the Wichita office?

A. Right.

Q. And in fact all of your testimony here goes to your Wichita office operations; is that correct?

A. Yes.

Q. Do you carry any bonds on your employees, surety bonds on your employees?

A. We do. All of our employees are bonded to the amount of $50,000.00.

Q. How much?

[fol. 13] A. Fifty thousand.

Q. In your Complaint it is stated that the bond is in the amount of $25,000.00.

A. Well, I believe that has since been raised.

Q. It is at least twenty-five thousand?

A. At least twenty-five thousand, and in the case of managers it is probably fifty thousand.

Q. Can you tell us how many contracts you have existing in your Wichita office at this time between your firm, yourself, and debtors?

A. Approximately two hundred fifty.

Q. And if these were all paid out to conclusion, approximately how much money would this involve as being paid through your office?

A. Well, if they were paid out to conclusion it would amount to about $2,000.00 apiece.

Q. Or approximately $500,000.00 being passed through your office?

A. Right.

Q. Now can you tell us if Senate Bill No. 366 becomes effective on July 1st and this Court does not enjoin the defendants from proceeding to enforce the Act, can you tell us what effect this will have on your business?

A. Well, in a conversation with the County Attorney, he [fol. 14] informed me that he would be required to enforce the law, that is, we would be required to close down and shut our operation, close our business.

Q. Did he tell you that he would have to file a new complaint every day as long as you continued to operate the business?

A. Yes, he did.

Q. What effect would this have on your business?

A. Well, we would simply have to close the business. I don't see how we could operate under those circumstances.

Q. What would this do to your existing contracts?

A. Well, it would be—it would void them. We would be forced to void them. We wouldn't have any choice. There is no way that we could fulfill our obligations towards our clients if we were not allowed to by this law, by this law being enforced.

Q. Do I understand that you have new clients coming into your office every day?

A. Well, we do. Our business is no different than, basically, any others. We depend on volume. And if we don't get new business every day, that is to say new clients, not necessarily every day but in a manner of speaking, business is just going to dry up.

Q. Could you speak up a little bit?

[fol. 15] A. Yes. I am sorry.

Q. Where do these new clients come from?

A. Well, these new clients come both from advertising and referrals.

Q. This is advertising that has already been accomplished and referrals from people whom you have served previously; is that correct?

A. That is right, we have advertised extensively since we have first been here and, of course, which represents quite an investment, and also we have quite a number of referrals from people who feel that we have done a good job for them and also from creditors.

Q. And if this bill is enforced, if this Court does not restrain the enforcement of this bill pending a hearing by a three-judge court, as you have requested, it is your opinion that you will be unable to service your present contracts and to serve any new clients?

A. That is right.

Q. And you anticipate that there will be new clients who will be seeking your services?

A. Yes, I do.

Mr. Bell: That is all.

[fol. 16] Cross examination.

By Mr. Sanborn:

Q. Mr. Skrupa.
A. Yes, sir.
Q. Are you an attorney at law?
A. No, sir, I am not.
Q. Is anybody in your Wichita office an attorney at law?
A. No, sir.
Q. Have you regularly employed counsel to advise you about your business problems in the conduct of this business?
A. We have employed counsel, yes, to advise us on business problems that do arise, just as any other business does.
Q. My question was specifically whether you have a regularly retained counsel, who advises you on the day-to-day operation of your business so far as it pertains to—
A. (Interrupting) No, sir, we do not.
Q. —so far as it pertains to legal problems?
A. No, sir, we do not.
Q. Then, what advice do you undertake to give persons who come to your office in response to either newspaper advertising or referrals from the sources you have mentioned?
A. Well, our services consist merely of financial advice [fol. 17] and a budgeting system.
We are not engaged in giving any opinions of a legal nature.
Q. That of course would be a conclusion, wouldn't it, sir?
A. Yes, it would.
Q. All right. Now, specifically my question was: what occurs in an interview with an individual who comes to your office seeking a solution to his financial difficulties?
A. Well, when a person comes to our office, he is having problems making ends meet. In many cases because he is a poor manager rather than because he is actually too far over his head in debt.
We take a list of his expenses and then we take a list of his income and his family obligations and how much he

has got going out and how much he has got coming in. Then we try to figure out how much he has available to pay towards his bills on the average of a month, and he pays us so much each payday and we in turn distribute this to his creditors for him in such fashion as to try to keep them satisfied and to get him out of debt over a period of time.

Q. Does it happen that some of these creditors whom you get in touch with are represented by counsel?

[fol. 18] A. Only if it would be a major problem or a divorce problem, something like that.

Q. I am referring to counsel concerning the indebtedness.

A. No.

Q. You never talk with any lawyers concerning the indebtedness of the debtor, then?

A. Only if they are representing a creditor.

Q. That was my question: whether it happened that when you call these creditors, you find or you have found they are represented by counsel.

A. Occasionally.

Q. And when you talk with their counsel, do you discuss the arrangement of terms for the extension of time in which to pay the indebtedness?

A. In most cases the attorney has already set up the amount that he wishes the debtor to pay. We simply go along with it.

For instance—

Q. You don't discuss the amount of the payments then with the attorney?

A. If it is a matter—if an attorney has a judgment and he says he wants twenty dollars a month, we arrange so he gets twenty dollars a month if we possibly can. But we do not determine whether or not the debt is valid or in-

[fol. 19] valid or if the man says that he owes John Jones so much money, we take him at his word.

Q. My question was whether or not you negotiated with these creditors regarding the payment of the debts and extending terms, both as to the amount and the period of time in which repayment would occur.

A. We negotiate to the extent that we say "you will re-

ceive so much a month until the debt is paid in as long as this man is paying us regularly," according to the terms of our contract.

Q. In so doing, do you ever arrange or discuss a proration of the amounts?

A. By that do you mean a reduction of the payment?

Q. Yes.

A. Yes, occasionally.

Q. In so doing, do you when a person comes seeking your services attempt to advise him of the advantages of employing your company to work out a budget plan and then to have him deposit a certain amount each week or month and then have you distribute it; is that what your service consists of?

A. Yes.

Q. And then do you govern the amount of payment which you negotiate or attempt to negotiate with each in-
[fol. 20] dividual creditor on that list by the type of claim it is and whatever, how consistent the particular creditor is, and whatever you can to try to make all his payments cover all of the money?

A. We try to fit the bills within the man's income.

Q. I am just referring to your relations with the creditors. I am speaking specifically, or asking you specifically whether or not the amount each creditor receives each week or each month depends upon the nature and amount of his claim; does it depend on that?

A. Yes.

Q. And does it depend upon the amount of his security?

A. To some degree.

Q. And does it also depend upon the extent of pressure exerted for payment by that particular creditor?

A. We try to satisfy the creditor.

Q. So the answer would be "Yes, it does," would it not, sir?

A. Yes, sir.

Q. And creditors who appear to be in the strongest position to prevent the successful consummation of the plan naturally receive more concessions so that the plan can successfully operate for this consumer; is that correct?

A. Well, sir, I wouldn't say that that is necessarily true, no, sir. We try to be fair to all creditors concerned.

[fol. 21] Q. Suppose he has a car and he wants to hold onto this car and you call up the finance company, do you try to fix it up with them so he can keep the car to work in?

A. Let me say this, sir: that in the case of fixed finance payments, in most cases we just assume that that is the amount the payment is going to be.

For instance, if he is paying the ABC Auto Company fifty dollars a month, we don't try to change that figure except in extreme cases where the man absolutely can not make it, and then we will call and see if they will go along with it. If they don't, why, then there is nothing we can do.

Q. Now, what you actually do is make a written agreement with this debtor whereby he undertakes to make these weekly or monthly deposits with you and then you undertake to use your best effort to persuade the creditors to accept the payments according to the plan, don't you?

A. That is right.

Q. And if you are successful in doing this, you distribute the payments, don't you?

A. That is right.

Q. And for your services you get a percentage of the indebtedness or a scheduled amount, depending upon indebtedness, which is roughly a percentage equivalent, don't [fol. 22] you?

A. Correct, sir.

Q. What are your percentages?

A. Well, it will roughly run anywhere between five and nine per cent of the total overall indebtedness.

Q. Now, what instructions, if any, do you give this client, debtor, as to what he should do if he gets some communication from a creditor or from some attorney while you are working on this debt pooling arrangement? Is he to call you, or what?

A. Well, naturally we want to know about any communication. However, if he feels that there is some matter for negotiation, or if he feels that for some reason he doesn't owe this amount, then we simply suggest that he see an attorney. We do not try to determine whether or not he owes this.

Q. My point was "if." A part of your instructions to him are, are they not, sir, that if he has some problem concerning the operation of the plan and some creditor gets in touch with him, since you are trying to set the plan up, you have him get in touch with you and then you get in touch with that person and try to work it out, don't you?

A. Yes, sir, right.

[fol. 23] Q. You try to get him to take the plan.

Now, this is all in the form of a contract, isn't it?

A. Yes.

Q. Do you have copies of your business forms with you?

A. Yes, we do.

Mr. Sanborn: Could we have those and get him to identify them and put them in, please?

Mr. Bell: I think at this time the plaintiff would like to note for the record that we do not feel that this line of questioning is material to this hearing, since the only question on this hearing is whether or not the plaintiff will be irreparably injured unless a restraining order is granted until the matter can be heard by a full court, and we would object to any further line of questioning on that basis.

Mr. Sanborn: Your Honor, we feel the materiality lies in the fact that the Federal Rules of Civil Procedure provide that when proceedings on a hearing for a temporary restraining order in this class of case, as set out, I think it is in Rule 56, Rule 55 or Rule 65 says what you do—will you forgive me if I am mistaken as to the number—and Section 2284, Paragraph 4, sets out what must be [fol. 24] found as a matter of fact, and one thing in issue here is whether there is any substantial federal question presented and, of course, if there is no substantial federal question presented, then it would not be proper, we feel, for the police power of the State of Kansas to be prospectively stayed by the very great power of judicial restraint, which of course we are not questioning jurisdiction. We are merely saying that the factual content of proof must present to You Honor some substantial federal question.

I would like to have these marked, please.

Mr. Bell: May it please the Court, the particular section of 28 USCA involved, 2284, provides that the Court

may grant a temporary restraining order to prevent irreparable damage, and the statute further provides that any restraining order shall contain a specific finding based upon evidence submitted to such judge and identified by reference that specified irreparable damage will result if the order is not granted.

Now, there is no question in our mind but what there is a substantial federal question. I can't see where this line of questioning goes to that particular issue. Nor do we feel [fol. 25] that it necessarily has to be a specific finding or finding of the Court on this type of an order.

Unless this Court wants to get into all of the merits of this case, we feel that it is simply not proper and we would move to strike all testimony along this line and object to any further proceedings along this line at this time.

The Court: Well, I have no desire to try this lawsuit this afternoon on its merits, I will assure you of that.

Mr. Weigand: Might I suggest, Your Honor, that the purpose in us having this witness testify as to the nature of his business is so that the Court could ascertain that this statute if enforced would put him out of business and would create irreparable damage and that is the only issue, I think, that is now properly before the Court, is as to whether or not this man's business is such that the statute attempts not to regulate it but to prohibit it and put him out of business, and that is the only question now until we can submit to Your Honors, and it has to be a three-judge court that hears even the temporary interlocutory order.

Mr. Sanborn: May it please Your Honor, I don't wish [fol. 26] to stop this hearing part to get into the law, but we believe that the Johnson case in 128 Connecticut, 586, answers his question. The question before the Court is not whether this man will be financially damaged. The damages to be reviewed as to whether or not he will be financially damaged are not what are meant by the words "damages" when someone alleges irreparable damage, but rather it is the nature of the right and whether that right in fact does exist as a property right, which is the subject matter of the Court's inquiry as to whether or not someone will be irreparably damaged. That is why we are

going into the nature of the business rather than the extent of financial investment therein.

The very quotation that we gathered in preparation for this case was "whether damages are to be reviewed by a court of equity "—pardon me—" to be viewed by a court of equity as irreparable or not depends more upon the nature of the right which is injuriously affected than upon the pecuniary measure of the loss suffered." This is the only reason for going into this phase.

The Court: You may proceed.

Mr. Sanborn: Thank you, Your Honor.

[fol. 27] Q. I hand you what has been marked by the Clerk for identification as Defendant's Exhibits "A" through "F", and ask you to state after examination of them whether or not they are a set of your business forms with which you do business within the State of Kansas and in Sedgwick County.

A. They are.

Q. Are they?

A. They are to the extent that there have been some minor changes made in one of these forms—one of these forms is no longer in use.

Q. Would you please pick that out from the others, then, sir.

A. Right.

Q. What number do you refer to as no longer in use?

A. "F".

Q. Thank you. When did you stop the use of "F", sir?

A. It is on the top of the statement there.

Q. I say when.

A. February.

Q. Thank you. Now, was that before or after the case in the District Court of Sedgwick County, Kansas?

A. Which case are you referring to?

Q. No. B-6975, Frank C. Skrupa versus Gordon Oliver, 10 February 1961.

[fol. 28] A. After.

Q. Did the District Court there rule that you had to discontinue use of that?

A. No, sir; the forms, as I recall, were not in question.

Q. Did Judge Kline make any ruling with regard, at that time—

Mr. Bell: We object to this line of questioning unless counsel shows any relevance to the issues in this case.

The Court: Why is it relevant or material?

Mr. Sanborn: It shows that there is no irreparable injury because even before the effective date of this statute the District Court in considering his property interest, and this just goes to the property interest—excuse me—that the District Court of Sedgwick County, Kansas, found that this did constitute the unauthorized practice of law.

Mr. Weigand: If the Court please, the District Court of Sedgwick County, Kansas, decision would not affect this Court's jurisdiction to determine the validity of this statute. And it wouldn't be res adjudicata because it isn't the parties here and it wouldn't be binding and it couldn't be anything more than a citation of a decision of a court [fol. 29] and of a record that was not appealed.

The Court: I am not here today to try the case on its merits.

Mr. Sanborn: All right, sir. We would like to offer, Your Honor—I didn't mean to get off on some other subject, anyway—we would like to offer in evidence the business forms heretofore identified by the plaintiff herein as his business forms.

Mr. Bell: We object on the ground of relevancy to this hearing. Otherwise, we have no objection.

The Court: Overruled. I will admit them. Are they marked as one exhibit, attached together?

Mr. Sanborn: "A" through "F".

The Court: I will admit them.

Mr. Weigand: I thought "F" was no longer in use.

Are you going to offer it, anyway?

Mr. Sanborn: Yes, sir. It is about the nature of the business activity.

Q. When you are interviewing the people, you have referred to as clients, do you advise them of their rights relative to their financial problems so that they may make a choice between your plan and the plans provided by the

Statutes of the United States pertaining to wage earners or pertaining to bankruptcy?

[fol. 30] A. Sir, we do not discuss bankruptcy or wage earners plans at any time during our interviews. If these subjects are brought up, we suggest that they see an attorney. We have no advice to give them on those plans. Ours is a budgeting service, sir, not a means of disposing of the man's moral obligations, and financial.

Q. Then, if a person doesn't bring up the bankruptcy laws of the United States pertaining to wage earner plans, you don't bring it up to him?

A. No, sir.

Q. Then, if he doesn't bring up the subject or isn't aware of such plan, it is not called to his attention; is that right?

A. No, sir; when a client comes to us, or a person comes to us that is in debt, we assume that the reason he is coming to us is to pay his bills, not to cheat his creditors.

Q. Not to cheat his creditors. A person who comes to you then doesn't have a choice presented to him of the remedy of the wage earners plan in the United States District Court and your plan, does he?

A. I have already stated that we do not discuss wage earners plans or bankruptcy actions.

Q. You do advertise your services?

[fol. 31] A. That is right, sir.

Q. Then, you do advertise that the fidelity of your employees is insured by bonds?

A. Yes, sir.

Q. And you do advertise a schedule of payments.

Mr. Sanborn: Will you mark that, please, that page.

Q. Please look at the page of the "Personal Finance Law Quarterly Report," Volume XV, No. 3, Summer of 1961, page 88, column 1, at the reproduction or purported reproduction of an advertisement which begins "Bills Pressing" and after inspection, please state whether or not that is a reproduction of one of your advertisements.

A. That is a reproduction so far as I know. That is to say, with the exception of one or two words.

Q. Is the format—

A. (Interrupting) The format is the same, right.

Q. Are the contents the same? It is page 88, if you have lost it.

A. Yes, roughly. There may be some small changes. It is probably an ad that we have used at one time or another.

Q. The reason I am asking you to identify it is because I wish to offer it, so I don't want to go on probabilities or suggest that it is something that it isn't.

[fol. 32] A. Sir, our name is on it, so obviously we have used it. These people have taken it from somewhere. I don't know who they are.

Q. I am not trying to entrap you. I just wanted to find out whether or not you have read what I just placed before you.

A. Yes, sir, I have read it.

Q. Is there anything different in any words there from one of your advertisements?

A. No, it is an ad that we have used. It is not an ad that we continuously use. It is an ad that we have used.

Mr. Weigand: Has counsel offered this?

Mr. Sanborn: We thought we would have you inspect it first and then we would offer it.

Mr. Weigand: If you are only going to offer this "Bills Pressing"—

Mr. Sanborn: That is the idea.

Mr. Weigand: —just that deal, take it out of the ad—

Mr. Sanborn: I got that from the Law Library.

Mr. Weigand: I am not talking about that. The entire magazine has no relevancy to this.

Mr. Sanborn: That is true.

Mr. Weigand: If you want to cut this out and offer [fol. 33] this, we will not object to it. We don't think it is material to any issue now before the Court, but we will not object to the Court seeing it.

Mr. Sanborn: Thank you. We do so offer it.

The Court: Just that portion is your offer, is that right?

Mr. Sanborn: Yes, sir.

The Court: All right.

Mr. Weigand: We can cut it out, Judge.

Mr. Sanborn: I might tell you that that happens to

belong to the Law Library and I don't wish to deface that book.

Mr. Weigand: We can agree that the Court Reporter can copy that and then you can withdraw it.

The Court: He may.

Mr. Sanborn: I might tell the Court that anything else there can properly be placed in a brief with perfect decorum and submitted to Your Honor for your consideration in this case, in my judgment.

(Thereupon, the above ad referred to in Exhibit "G" is in words and figures as follows:

"Bills Pressing?

"If installment payments or past due bills are troubling [fol. 34] you, let us consolidate and arrange to pay all your bills, past due or not, with one low payment you can afford.

"If You Owe	As Low As
$1,000	$15 per week
$2,000	$25 per week
$3,000	$30 per week

"Open Nights by Appointment
"No Security—No Co-Signers
"Bonded for your protection
"Credit Advisors, 211 Brown Building
"Phone AM 5-0635

"Debt Worries ? ? ?
"Financial Management Service
"918 Central Bldg. HO 4-4261
"(Wichita Eagle-Beacon, June 4, 1961)")

By Mr. Sanborn:

Q. If a person after hearing of how your plan works is agreeable to signing up with you, you don't attempt to prevent him from seeing his attorney at all, do you?

A. Heavens, no.

Q. But you do attempt to show him the advantages of entering into the plan which your advertisement or your other reference has drawn him to see?

[fol. 35] A. We attempt to show him the advantage of getting out of debt and paying his bills in a regular and systematic fashion.

Q. By the use of your plan?

A. By the use of our services, right.

Mr. Sanborn: We have no more questions, but Mr. Henson has.

Cross examination.

By Mr. Henson:

Q. Mr. Skrupa, I have just two or three questions I would like to ask you on behalf of the Attorney General.

When you stated on direct examination that you would be forced to discontinue business if the County Attorney, Mr. Sanborn, files a complaint against you, would you explain why you would be forced to discontinue business upon the mere filing of a complaint?

A. Well, sir, certainly I am not going to subject the people in my office to arrest or even harassment. I mean, I feel that we are operating a bona fide legal service here —not legal, I am sorry—a bona fide service here to help these people out, and if they are going to padlock the doors how can we stay in business? I don't know what they are going to do.

[fol. 36] The County Attorney told me he was going to shut us down. What does this mean? I don't know what he means, sir.

Q. Well, then it possibly could mean that if you were charged criminally and you were subsequently convicted and your conviction was upheld by the Courts of the State of Kansas as being accomplished under a lawful statute and you were forced to pay a fine and maybe suffer imprisonment, then you would suffer some irreparable damage.

A. Well, we certainly feel so. Besides, there is the fact of the reputation here.

Q. Now, have you been served with any summons or any accusation that you have violated this Senate Bill 366?

A. From who, sir?

Q. From any law enforcement officer of the State of Kansas.

A. From no law enforcement agency other than the conversation that I had with the County Attorney on the telephone.

Q. You have been served with no summons or accusation?

A. I have been served with no papers, no, sir.

Q. Have you been informed by the Attorney General, Mr. Ferguson, that he intends to prosecute you under Senate Bill 366?

A. No, sir, I haven't.

Q. Have you had any contact at all with Mr. Ferguson?

[fol. 37] A. Only through my attorneys, sir.

Mr. Henson: That is all, Your Honor.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Bell: The defendants don't deny that they are going to enforce this law, do they?

Mr. Weigand: If it is not enjoined.

Mr. Henson: Your Honor, we don't feel this is the time to make legal obligations.

Mr. Bell: This is a matter of allegation in our petition and I will put on additional proof, if necessary.

Mr. Henson: We feel the mere statement by the County Attorney, that he intends to do his duty under the law, is not sufficient to show irreparable damage.

Mr. Bell: Well, I will go further than that:

Won't the Defendant County Attorney stipulate that he advised myself and Mr. McRae yesterday in the County Court House that he intended to enforce this law and that he would file an additional complaint every day as long as he continued to operate?

Mr. Henson: Perhaps I should amplify my statement. We don't consider that this shows irreparable damage sufficient to warrant the Federal Court interfering with the enforcement of a State Criminal Statute. State Courts [fol. 38] are available.

Mr. Bell: Is it not stipulated that the facts are there? What the result is is a matter for court determination.

Mr. Henson: We don't stipulate to that. We don't stipulate that you are showing irreparable damage.

Furthermore, we don't think the Attorney General could enforce this if he wanted to in the District Court.

Mr. Bell: In order to save time of the Court, let me inquire of counsel this: First of Mr. Sanborn, the defendant, will you not so stipulate that the facts as I have outlined with reference to what you intend to do in the enforcement of this Act is substantially correct, are substantially correct?

Mr. Sanborn: If you will permit me, I will just tell you my version of what happened, or the Court, and I can do it briefly.

When I talked with this gentleman on the phone, when he called me from Omaha, he inquired of me—

Mr. Bell: I am talking about yesterday.

Mr. Sanborn: I know, but he has been saying I said "I am going to close you down." What I told the man was [fol. 39] that this is the same as any other criminal statute of our State and would be treated the same as any other statute of our State, and he inquired whether we would just give token enforcement to it, and I advised him we would not just give token enforcement to it, that whatever sanctions were imposed would be the function of our courts and not of our office.

What Mr. Bell is referring to as of yesterday was a conversation between he and Mr. McRae and me, in which I stated to them that in the case of pollution cases the practice had been followed in the past of advising the person that a new complaint would have to be filed every day if they didn't desist from the continued course of conduct which violated the State law, and that I supposed we would have to use the same type of measures in this case if a person was arrested for an offense and then committed the same offense the next day, and I don't think any time a State statute is involved that you take a position without regard to what the other one-hundred-five county attorneys might be compelled to do and you work with the Attorney General in the matter, but as I conceive the statutory and constitu- [fol. 40] tional legal machinery in the State of Kansas, it is as the Assistant Attorney General has stated.

The Attorney General does not file actions except in certain specified classes of cases, unless he comes to the conclusion that the County Attorney isn't doing his job properly.

And it isn't any desire to evade what they say, but I don't think that we should be pinned down to one certain course of action prospectively when we have not yet been presented with the first case. That is my reason for kind of elaborating on what Don said. They are not misrepresenting anything about what I said to them, Your Honor. He pointed out that they couldn't file criminal complaints if —they would have to take steps—it won't come to that, anyway, but we were just discussing.

Mr. Bell: Moving from Mr. Sanborn to the Attorney General's office, is it not true that the Attorney General's office has stated that they will be obliged to take the position that this statute is constitutional and valid and that if advice is requested of them from the County Attorney's office, or anyone else, that they will have to take the position it should be enforced.

[fol. 41] Mr. Henson: The Attorney General's office by statute is counsel for State Departments and agencies of the State of Kansas.

If one of those departments or agencies is sued, we as their counsel would of course undertake to defend the legality of their actions. We think that is something different than being a defendant in a case such as we are in this action.

Mr. Bell: I am trying to shorten this hearing and you haven't answered my question.

I am asking you: Is it not true that the Attorney General's Office takes the position that this statute is constitutional and that it is valid and that if requested for an opinion from a County Attorney, or other officers of the County or State, that the Attorney General has stated he will take the position that it is constitutional and valid and that it should be enforced?

Mr. Henson: I can not state— Are you saying Mr. Ferguson has made this statement?

Mr. Bell: I am talking about the Attorney General's office. You are representing him.

Mr. Henson: I say the Attorney General takes no position on the constitutionality of a state statute until it is [fol. 42] brought in question in some manner. We represent the Legislature as legal counsel and if their acts are challenged as illegal, depending upon the judgment of the Attorney General at the time, he would probably defend, as counsel defend the legality of that action of the Legislature.

Mr. Weigand: May I inquire of counsel?

Mr. Henson: Yes, sir.

Mr. Weigand: If the Court should determine that the County Attorney because of his intended enforcement of the action should be stayed pending a hearing on the preliminary injunction before the three-judge court, as provided by statute, and the Attorney General of the State of Kansas is not enjoined, will he assure this Court that he will not take any action or his office will not take any action to enforce this statute against this man until it can be heard on its merits before the three-judge court?

Mr. Henson: I am not authorized to commit the Attorney General's Office to any future course of action. I can cite counsel's attention to the statutes which give the Attorney General no authority to institute criminal prosecu- [fol. 43] tions in the District Court except in certain specified types of statutes of which Senate Bill 366 is not one.

Have I answered your question?

Mr. Weigand: Well, you asked a question of the witness which so far as I could see was of no materiality. The only materiality would be that the Attorney General of the State of Kansas did not, unless restrained, intend to enforce this statute against them until after the Court could determine its constitutionality.

Mr. Henson: If I may explain my question, I assume that the gentleman during his direct examination was trying to show irreparable damage would be suffered by this plaintiff if the Attorney General were not enjoined.

Mr. Weigand: If the enforcement of the statute was not enjoined.

Mr. Henson: The burden of showing irreparable damage is on you. I merely want to point out that I do not believe

the Attorney General has indicated one way or another that he is going to enforce the statute.

Mr. Weigand: That would only be material if there was no threat to enforce it pending the hearing by the three-
[fol. 44] judge court with respect to a determination of its constitutionality. It is only that interim period that is now before the Court.

Mr. Henson: I would think that it is up to the plaintiff to show that he will suffer irreparable damage if not temporarily enjoined.

Mr. Weigand: Well, Your Honor, there is no need to discuss the law now.

Mr. Henson: We don't believe that we have made any allegations or could make any allegations to enforce the statute.

Mr. Bell: Your Honor, I would like to ask the witness one more question.

Redirect examination.

By Mr. Bell:

Q. On cross-examination, Mr. Skrupa, Mr. Sanborn inquired of you about the matter of compromising debts, and I would like for you to explain whether or not you were talking about a compromise of a fixed payment or compromise in principal amount of debt.

A. We were talking only about compromising fixed payment. We don't make any attempt to compromise the total amount.

Mr. Bell: That is all.

[fol. 45] The Court: Any other questions?

Recross examination.

By Mr. Sanborn:

Q. Do you attempt to obtain extensions of time within which to pay the indebtedness?

A. Yes, sir, under some circumstances.

Q. When you have successfully effected such extension

of time, do you expect the creditor to honor the agreement that you have reached?

A. Yes.

Q. And do you attempt to make this effectuation in such a fashion that it will be binding upon the creditor to keep his word and if your client does his part of the agreement to perform the payments agreed upon, that the creditor will do his part?

A. Yes, we have to assume this.

Q. You attempt to make a meeting of the minds of the parties upon this matter?

A. Right.

Q. And you attempt to cause the creditor to recede from insisting upon his full right to payment as of a certain time and to consent to have a lesser periodic amount until the total amount is paid?

[fol. 46] A. Yes, until the total amount is paid, but we do not bargain on the total amount.

Q. You don't go into the question of whether the debt may be usurious or not, then?

A. No, sir. If a man comes to us and he says he owes Jones $500.00, we assume he owes Jones $500.00.

Q. What do you do with respect to the interest?

A. I don't follow you, sir.

Q. You get extensions of time. When you do that, what do you do with respect to the interest that accrues?

A. Well, it just accrues and we pay it. We assume that these people, if they have the right to charge interest, that they are charging a fair rate of interest.

Q. You don't undertake to see whether it is fair?

A. No, sir, we don't question their right. If a client of ours felt that he was getting cheated, again I repeat that we would advise him to see legal counsel about this matter.

Q. If what?

A. If a client of ours assumed or for some reason thought that he was being cheated by a creditor or charged too much interest, or anything like that, and told us about it, we would simply refer him to legal counsel, no specific legal counsel, just tell him to get one.

[fol. 47] Q. Do you ever decide after reviewing someone's

financial condition that you cannot do any good for them and tell them they better take bankruptcy?

A. No, sir, we don't tell them to take bankruptcy. We merely tell him that we cannot be of any help to him and that we would possibly get him into more trouble than he is already in.

Q. And do you tell him what he should do?

A. No, sir, we do not.

Q. You haven't referred any of them to anybody?

A. No, sir, we have never referred a single person to any attorney in this town or any other town.

Q. You, yourself, have not. You don't stay around the Wichita office, do you?

A. No, sir, but my people have those instructions.

Mr. Sanborn: That is all.

The Court: You may step down.

(Witness excused.)

The Court: Is there any other evidence on behalf of the plaintiff?

Mr. Bell: We have no further evidence, Your Honor.

The Court: Do the defendants have any evidence?

ARGUMENT ON APPLICATION FOR TEMPORARY RESTRAINING ORDER AND RULING THEREON

Mr. Sanborn: No, sir. Do you have a copy of the statute, Your Honor?

[fol. 48] The Court: I have the Act as it is set out in the Complaint.

Mr. Sanborn: Well, my disadvantage is that we have never seen a copy. We do have a copy of the Senate bill and Donald Bell gave me a photostatic or other mechanical reproduction of his copy of the Senate bill, and I am just going on the assumption that it was passed finally in the form in which they have it, but I have no knowledge that I could represent to this Court that that is the form in which it was passed.

Mr. Bell: All I can say, Mr. Sanborn, is that we have talked to the legislator who helped to push the bill through and he advises us that this is the form of the Act, that it

was not amended when it passed. That this is the Act that was signed by the Governor of the State of Kansas.

As experts in the law, we understand that the statute is to become effective either on June 30th or July 1st, as it is printed and typed in our Complaint.

The Court: Anything else?

Mr. Sanborn: All right.

The Court: Anything else, gentlemen?

[fol. 49] Mr. Weigand: Your Honor, there is a matter of the necessity for any order restraining the defendants to be conditioned upon posting of a bond to pay any damages that might result as a result of it.

I might say to Your Honor that—I don't know whether you want to go into the law with respect to it—but with respect to whether or not there is a substantial federal question, the virtually identical Pennsylvania statute, enacted in 1955, which instead of calling this "Business Debt Adjusting" called it "Budget Planning." If Your Honor will look at Section D of the Kansas Act, I will read from this decision to show you how identical the Pennsylvania statute was, and it was held to be unconstitutional and the deprivation of a person's property without due process of law. I think that is all that we need and that case has never been reversed.

Mr. Sanborn: We would like to know the citation, if we may, please.

Mr. Weigand: Commonwealth v. Stone, 155 Atlantic 2nd, 453, Supreme Court of Pennsylvania. This is the definition section of the Pennsylvania Act:

"Budget planning as used in this section means the making of a contract, express or implied, with a particular [fol. 50] debtor, whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the budget planning business, who shall for a consideration distribute the same among certain specified creditors in accordance with the plan agreed upon."

That is so similar as to be almost identical, if the Court please, and I think as to substance is sufficient without the additional. We have got a lengthy brief here but Your Honor is not now passing upon the question as to the

constitutionality of the Act, but whether or not there is a substantial question presented and whether pending the hearing of that by a three-judge Federal Court they should be enjoined from restraining because of irreparable damage, and I think if Your Honor would fix a bond which would be conditioned, the restraining order to be conditioned that it wouldn't be effective until the bond was posted, that the statutes of the United States of America which provide for this action under these circumstances would be completely complied with.

The Court: What do you suggest as the amount of the [fol. 51] bond? I am talking to both sides.

Mr. Weigand: I don't know what their theory of damages could be to the State of Kansas for a period of—what will we have, three weeks or a month—perhaps a month's delay probably, Judge, before the matter of the application for an interlocutory injunction can be heard.

The Court: I assume that the case would be heard on its merits whenever the three-judge court is able to convene.

Mr. Weigand: Well, both ways is provided in the statute. The period of time and I imagine that the only basis of the damages that the State of Kansas could suffer would be the work of the attorneys in ridding themselves of the unlawful restraint.

If there are any other elements of damage, I don't know what they could possibly be.

Mr. Sanborn: If it please the Court, we certainly hope that no restraining order is issued; however, if it should be issued, the measure of damages would be the extent of the business unlawfully engaged in in violation of the law of the State of Kansas, which by the evidence of the plaintiff, I believe was—I don't recall—I think he said some [fol. 52] $500,000.00 per annum, and I believe he stated that his investment was $24,000.00, but the business, not the investments, is what would be the measure of damages.

We have three reasons why Your Honor should not issue a temporary restraining order. The first—we have three cases to cite. By the common law of the State of Kansas, the advice to clients—and we certainly urge they are clients which this man stated to Your Honor he was giving—was held in Depew v. Wichita Association of

Credit Men to be engaging in the practice of law. The citation in the Pacific Reporter of that case is 49 Pacific 2nd, 1041. Finding No. 6, which appears on page 1045, sets out—

The Court: Aren't you going to the merits of the case now?

Mr. Sanborn: I am trying to go only to one question, whether there is a substantial federal question, and I am trying to point out that because of the Depew case in Kansas and because of the fact that our courts without the aid of statute has already found that this is a practice of law, that you can not divest an interest unlawful, that has been declared to be unlawful, before you begin to [fol. 53] engage him. The Depew case was in—Claude Depew brought it on behalf of the Bar Association and that was decided October 5, 1935. Rehearing denied December 16, 1935. And the Supreme Court of the United States refused certiorari in that case, and my point is simply that for many, many years it has been the law that these practices were the unlawful practice of law and the fact that our Legislature should pass a statute declaring a criminal penalty for engaging in the unlawful practice of law is not something new and different and novel, but merely particularizes a certain phase of the business specifically found to be unlawful in 1935 and reviewed by our Supreme Court and not reviewed by the Supreme Court of the United States.

The Court: Let me see that Depew case.

Mr. Sanborn: Then this Home Budget Service v. Boston Bar Association, decided by the Supreme Court of Massachusetts January 7, 1957, argued November 5th, 1956, Home Budget Service, Incorporated, v. Boston Bar Association, an injunction was sought by the Home Budget Service. That is 139 Northeast 2nd, 387:

"Action by corporations and individual furnishing debt [fol. 54] pooling services against Bar Association for declaratory decree as to constitutionality of statute making it illegal for anyone but a member of the bar to furnish services in connection with debt pooling plans held the statute is not constitutional as an interference with purely

judicial function to determine who may practice law is valid enactment in aid of courts' powers to make determination, to make determination and that plaintiffs would be enjoined from rendering such services. A person coming into equity must have clean hands. A person asking a court of the United States not only to enjoin action by a state but to stay the hand of the legislature of a state passing a statute in aid of the common law of the state, as declared by its Supreme Court, that same person having previously been found by the District Court to have been engaged in unlawful practice, all without the aid of this statute, does not have, in our judgment, such clean hands as to call forth this summary and very powerful remedy."

[fol. 55] I would like to merely ask Your Honor to read from page 389, from which I took all the questions of my cross-examination of this gentleman, and find that he answered them in the same way that the Massachusetts court had considered to be this type of business in making their ruling.

Mr. Henson: If it please the Court, if it is proper at this time to do so, I would like to move that this action be dismissed as to William Ferguson, the Attorney General, on the grounds that the plaintiff's evidence has not shown, nor do the statutes of the State of Kansas give him any authority to enforce this criminal statute initially against these defendants. Therefore, we feel they have no cause of action against him as threatening to enforce the statute against them.

Should our motion to dismiss be overruled, we urge that the temporary restraining order not be granted.

We feel that the plaintiffs have not shown that they will suffer irreparable injury or harm if the status or if the matter is continued without such an injunction until the matter can be heard by the three-judge federal court. They [fol. 56] have not shown that any complaints are now pending or have been filed against them. They could not show that because the statute has not yet gone into effect. All they have shown are statements by the County Attorney that he will consider this as he considers every other criminal statute and proceed accordingly. And we feel that statements by a county attorney that he will enforce the

law do not in and of themselves demonstrate that the plaintiff is going to suffer irreparable injury if a temporary restraining order is not granted.

Mr. Weigand: If Your Honor please, the Massachusetts case that they are relying upon, while it appears to have a contrary result from the Pennsylvania case, it is again one of the things even if it was identical, but it isn't. In Massachusetts the statute took a different form. The Massachusetts statute, as I understand that case, merely defined certain acts as the practice of law. And the Supreme Court of Massachusetts merely held that the Legislature had a right to define certain acts as the practice of law.

Now, this statute doesn't say anything about the practice of law. It merely prohibits a man from agreeing [fol. 57] with another man to take a periodic payment and distribute it among his creditors for a fee.

The Supreme Court of Pennsylvania has held that to be a lawful business, and we have other decisions which on the hearing on the merits, I think we can convince any court that that is a lawful business and while it is subject to regulation, it is not subject to prohibition, and this statute prohibits rather than regulates. It doesn't say a man can do so and so under certain conditions. He couldn't say, or it doesn't say he can do so if he posts bond. It doesn't say he can do so if he posts a license. It says he cannot do it. And it is invalid, unconstitutional, deprivation of an ordinary business practice which is not the practice of law.

Now, in the Depew case, which they mentioned, that went to the Supreme Court on Claude's right as president or a member of the unauthorized Practice Committee to enjoin a person from practicing law. The result of that case, Your Honor, it came back after they held that he could practice law, and let me read to you the consent decree that was entered in that case and you can ascertain very readily [fol. 58] that it has no application to this statute or to this type of business at all.

"Whereupon, by consent and agreement of the parties it was by the Court considered, ordered, adjudged and decreed that the defendant, The Wichita Retail Credit As-

sociation, Incorporated, all of its officers, agents, servants and employees, and each and every one of them, be and are hereby restrained and inhibited and permanently enjoined from severally and jointly doing or performing any of the following acts:

"First, from preparing or filing in any district court in this State or before any justice of the peace of this State for and on behalf of another any pleading or other document, from appearing before or representing another in any manner in any action or proceeding in any district court in this State or in the court of any justices of the peace of this State.

"Second, from placing accounts for collections with attorneys at law, from using in its attempt to make collec- [fol. 59] tions any means other than the ordinary solicitation and dunning and from threatening legal action or threatening to place the account with an attorney at law and from threatening to enforce the payment of any claim or account by threatening legal action, provided, that if it appears to be the wish of the creditor the defendant may upon returning the account to the creditor suggest the name of an attorney at law or attorneys at law to handle the account or claim directly for the creditor; from receiving directly or indirectly any portion of any fee paid to or due to an attorney or for any legal services rendered in connection with the collection of a claim, account, demand or otherwise, from advertising or in any manner holding out that the defendants, or any of them, maintain a legal department for the use of others or that it in any manner maintains a law department for the practice of law by the hiring of attorneys to carry on the practice of law from employing directly or indirectly under any contract any attorney at law to file suits or accounts or other claims [fol. 60] of indebtedness for any claimant or creditor.

"Third, from preparing, furnishing or causing to be prepared and furnished in connection with the assignment, transfer or pledging of a debtor's business or property, or any part thereof, any agreement or assignment for the benefit of creditors or any trust, mortgage or any chattel

mortgage, deed or lease or other instrument of a similar nature or character in connection with such transaction whereby legal rights are effected or determined and from giving advice as to the legal rights under any such instrument or instruments from the assignment or transfer of property for the benefit of creditors by whatever means or instrument used by which legal rights are effected or determined and from giving legal advice thereon. This order is not to apply to use by the defendant in its business of blank notes, drafts and similar blanks ordinarily obtainable at a book store and the filling out of same where no legal skill or knowledge is required and where no advice as to legal rights in connection therewith is given and [fol. 61] no compensation or remuneration is received either directly or indirectly.

"Fourth, from using in connection with its collection department or collection agencies printed forms which simulate or are intended to simulate the process of courts and convey the impression that the defendant has the right to issue and serve court processes and bring suit, attachment, garnishment and other legal processes in court for the enforcement of the accounts and claims which it has for collection.

"It is further ordered that the cost of this action be taxed in the amount of twenty-one fifty be hereby assessed against the defendant."

And that was the final result of that, and if there is any similarity between the actions that the Bar Association agreed should be the subject matter of the decree and this action, Your Honor, I fail to recognize any semblance or similarity between them at all, and it not at all in point.

I think Your Honor has only one matter here before the Court today and that is to determine whether from [fol. 62] the evidence of this man's business and activities this statute would prohibit him from carrying them on until such time as the three-judge court can determine the constitutionality of it and setting a bond to pay them any damage which the restraining order wrongfully obtained would result to the State and County Attorney and the Attorney General of the State of Kansas.

Mr. Sanborn: Your Honor, I think counsel is going far beyond the opinion of the Supreme Court of the State of Kansas or the application of it. He cites some agreements between the Bar Association and this Association.

I invite Your Honor's attention to the fact that there were two cases involved in that opinion and it is both Depew v. Wichita Association of Creditmen and Beck, Attorney General, or State of Kansas ex rel. Beck, Attorney General, and I would like to invite Your Honor's attention to the fact that what the Supreme Court expressly found to be unlawful, one portion of it was Mr. Garrison, the manager's counseling people that his plan was a good plan and they ought to accept his plan and refraining from advising them as he was in no position to do, but, never- [fol. 63] theless, was undertaking to practice law, that they had other judicial remedies under the laws of the United States and this—we start out with a presumption that the Act is constitutional. We have it buttressed by the findings of our court, both then and now. We have this man in February having a finding adverse to the lawfulness which he has been perfectly at liberty to test out if he did not agree with the findings of our court. Here it is the end of June. This was in February. Now he asks you to—it isn't just like a controversy among people. It is a question of whether the sovereignty of our State shall be interfered with. And I know that it won't be interfered with lightly because I know we have a duality of sovereignties and the very fact that the United States would not interfere doesn't imply any weakness on behalf of the United States. It merely would be an application of the rule that if it is a proper exercise of power, it is entitled to the assistance of courts because courts alone determine what is lawful and unlawful practice of law in their state.

The Court: I am not going to determine nor will the three-judge court determine whether or not this is the un- [fol. 64] lawful practice of law.

All we will determine is the constitutionality of the statute that we have before us. That is a new question. That question is not before the State District Court. It was not decided in the State District Court. The statute didn't even exist at that time.

Mr. Sanborn: Right.

The Court: This is an entirely different question.

Mr. Sanborn: Your Honor, counsel, the reason I addressed my remarks to that, counsel tells you that it is an absolute prohibition. It isn't.

If you will see the statute alleged, it says:

"The provisions of this Act shall not apply to those situations involving debt adjusting as herein defined and incurred incidentally in the lawful practice of law in this State."

It doesn't prohibit a certain business. It prohibits making a business out of the practice of law which is a profession.

The Court: Anything else, gentlemen?

Mr. Sanborn: No, sir.

The Court: The temporary order will issue and I will [fol. 65] fix the bond at $2500.00.

Mr. Weigand, I suggest that you submit to me appropriate findings of fact in connection with the order.

Mr. Weigand: We have prepared an order, Your Honor, which, if I might show it to counsel to see if they have any objection.

The Court: If it is all right, you just leave it. I think we will adjourn court. In any event, you prepare and submit to me an order and, if it meets with my approval, I will sign it.

Mr. Weigand: Thank you, Judge.

Mr. Henson: Your Honor, do I understand that the Attorney General is maintained a party defendant?

The Court: I am going to keep his feet in the fire.

Mr. Sanborn: Your Honor, I am not trying to be technical, but the Governor hasn't been notified of this and he has to be notified too.

The Court: This is only a hearing on the temporary order, Mr. Sanborn. That five-day notice will be given in the time provided for by law.

Court will be adjourned subject to call.

[fol. 66] Reporter's certificate (omitted in printing).

[fol. 67] Clerk's certificate (omitted in printing).

[fol. 68] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

Civil Action No. W-2434

FRANK C. SKRUPA, d/b/a Credit Advisors, Plaintiff,

vs.

KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.

TEMPORARY RESTRAINING ORDER—June 28, 1961

This cause comes on to be heard on the application of the plaintiff in the above entitled cause for a restraining order and for an interlocutory injunction against the defendants, Keith Sanborn, County Attorney for the County of Sedgwick, State of Kansas, and William M. Ferguson, Attorney General for the State of Kansas, in the above cause on the verified complaint of plaintiff; it appearing to this Court that said complaint herein seeks an interlocutory judgment restraining the enforcement of Senate Bill 366, 1961 Kansas Session Laws, a statute of the State of Kansas, by restraining the acts of the County Attorney of Sedgwick County, Kansas, and the Attorney General of the State of Kansas, in the enforcement of such statute against this plaintiff upon the ground of the unconstitutionality of the said statute as provided in Sections 2281 and 2284 of Title 28 of the United States Code.

Whereupon, the Court after notice to the said defendants, who appeared at this hearing at 3:00 o'clock p.m. on the 28th day of June, 1961, by Keith Sanborn pro se and Chas. Henson for the Attorney General, and the Court having [fol. 69] heard evidence finds and concludes that immediate and irreparable damage will be caused to plaintiff by reason of the enforcement of said statute, in that evidence pro-

duced by the plaintiff shows that the enforcement of the statute would require the complete cessation of the plaintiff's business involving the plaintiff in breach of contracts partially performed, loss of customers and business, as well as good will and reputation, unless a temporary restraining order is issued against said defendants pending the hearing of said application for an interlocutory injunction, or until the further order of this Court.

It is ordered that upon the filing with the Clerk of this Court a bond giving security by the plaintiff in the sum of 2500.00 Dollars conditioned upon the payment of such costs and damages as may be incurred or suffered by any defendant who is found to have been wrongfully restrained, Keith Sanborn, County Attorney of Sedgwick County, Kansas, and William M. Ferguson, Attorney General of the State of Kansas, and their agents, associates, assistants and all persons acting in their behalf be and are hereby enjoined from filing any complaint against the plaintiff, his agents, servants or employees, for alleged violation of said Senate Bill 366, 1961 Kansas Session Laws, or prosecuting any acts for violation of same by said plaintiff or in any way attempting to enforce any of the provisions of said Senate Bill against said plaintiff until said hearing for said application for an interlocutory injunction or until further order of this Court.

Dated at Wichita, Kansas, this 28th day of June, 1961.

Delmas C. Hill, United States District Judge.

[fol. 70] Approved:

Weigand Curfman Brainerd Harris & Kaufman, By Laurence Weigand, Attorneys for Plaintiff.

Keith Sanborn, County Attorney, Sedgwick County, Kansas.

Charles N. Henson, Jr., Ass't Attorney General, for the Attorney General,

Defendants.

[fol. 71] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

[Title omitted]

ORDER FOR A THREE JUDGE COURT—July 10, 1961

Honorable Delmas C. Hill, United States District Judge for the District of Kansas, having notified me that an application for injunction has been filed in the above matter, and that it is an action required by Act of Congress to be heard and determined by a District Court of three judges:

Now Therefore, It Is Ordered that said Court shall be constituted as follows: Honorable Walter A. Huxman, United States Circuit Judge; Honorable Delmas C. Hill, United States District Judge; and Honorable Arthur J. Stanley, Jr., United States District Judge.

Dated on July 10, 1961.

Alfred P. Murrah, Chief Judge, United States Court of Appeals, Tenth Circuit.

[fol. 72] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

[Title omitted]

MOTION OF DEFENDANT WILLIAM M. FERGUSON, ATTORNEY GENERAL FOR THE STATE OF KANSAS, TO DISMISS—Filed July 14, 1961

Defendant William M. Ferguson, Attorney General for the State of Kansas, moves the Court to dismiss the action

because the complaint does not state a claim against defendant upon which relief can be granted.

Charles N. Henson, Jr., Assistant Attorney General, Topeka, Kansas, Attorney for Defendant.

Certificate of Service (omitted in printing).

[fol. 73] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

[Title omitted]

APPLICATION OF WILBUR D. GEEDING, ET AL. COMPRISING UNAUTHORIZED PRACTICE OF LAW COMMITTEE OF WICHITA BAR ASSOCIATION TO INTERVENE—Filed August 8, 1961

Come now Wilbur D. Geeding, Robert A. Coldsnow, Ralph Foster, Guy L. Goodwin, Donald B. Clark, William Porter, Julian E. Ralston, Cliff W. Ratner, Robert J. Roth, Robert M. Siefkin and J. Edward Taylor, Jr. and respectfully move the Court for permission to intervene and to file the answer and counterclaim hereto attached as Exhibit "A".

1. Applicants are licensed attorneys at law, residents of the City of Wichita and citizens of the State of Kansas. Applicants comprise the Unauthorized Practice of Law Committee of the Wichita Bar Association. The Wichita Bar Association is a voluntary association of attorneys at law resident in Wichita and citizens of the State of Kansas. Such association has more than 400 members, and it is impracticable to bring them all before the Court. The members of such association have a common interest in [fol. 74] preventing the unauthorized practice of law. Pursuant to resolution of the Board of Governors of the Wichita Bar Association applicants appear as representatives of the members of the Wichita Bar Association.

2. As stated more fully in the answer and counterclaim hereto attached the members of the Wichita Bar Association claim that the activities of the plaintiff as alleged in the complaint constitute the unauthorized practice of law and that the statute attacked in the complaint is simply declaratory of the existing common law of Kansas that such activities are illegal.

3. The courts of the United States are the final arbiters of whether or not state legislation violates the Constitution of the United States. If not permitted to intervene, a decision in favor of plaintiff in this action would or might preclude the claim of the Wichita Bar Association that plaintiff is engaged in the unauthorized practice of law, without its having an opportunity to be heard.

Wherefore, applicants pray that they be permitted to intervene herein and that the attached answer and counterclaim be permitted to be filed.

Wayne Coulson, 901 First National Bank Building, Wichita 2, Kansas, Attorney for Applicants.

Certificate of Service (omitted in printing).

[fol. 76]

EXHIBIT "A" TO MOTION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

[Title omitted]

ANSWER AND COUNTERCLAIM OF WILBUR D. GEEDING, ET AL., INTERVENING DEFENDANTS

Come now Wilbur D. Geeding, Robert A. Coldsnow, Ralph Roster, Guy L. Goodwin, Donald B. Clark, William Porter, Julian E. Ralston, Cliff W. Ratner, Robert J. Roth, Robert M. Siefkin and J. Edward Taylor, Jr. and for their answer and counterclaim, allege:

Answer

1. These defendants are licensed attorneys at law, residents of the City of Wichita and citizens of the State of Kansas. These defendants comprise the Unauthorized Practice of Law Committee of the Wichita Bar Association. The Wichita Bar Association is a voluntary association of attorneys at law resident in Wichita and citizens of the [fol. 77] State of Kansas. Such association has more than 400 members, and it is impracticable to bring them all before the Court. The members of such association have a common interest in preventing the unauthorized practice of law. Pursuant to resolution of the Board of Governors of the Wichita Bar Association these defendants appear as representatives of the members of the Wichita Bar Association.

2. These intervening defendants are officers of the courts of the State of Kansas and as such are authorized and required to call to the attention of the courts all instances of the illegal practice of law within their knowledge.

3. These intervening defendants admit the allegations of paragraphs 1, 2, 4, except the last clause thereof, 5, 7, and 8 of the complaint.

4. These intervening defendants deny the allegations of paragraph 3, the last clause of paragraph 4, paragraphs 10, 11 and 12 of the complaint.

5. These intervening defendants have insufficient information to form a belief as to the truth of the averments of the first two sentences of paragraph 6 of the complaint. These defendants deny the remainder of paragraph 6 of the complaint.

6. These defendants have insufficient information to form a belief as to the truth of the averments of paragraphs 8 and 9 of the complaint.

7. These defendants allege that the public interest and the protection of the public demand that legal advice and services be rendered to the public by qualified persons, schooled and educated in the law and who are duly admitted

to practice as attorneys and counsellors at law under the laws of the State of Kansas.

[fol. 78] 8. That the public interest requires and demands that any person receiving legal advice and services will receive the same directly from a duly qualified attorney and counsellor at law, who shall directly represent such person and who is at all times subject to the discipline and control of the courts of this state.

9. That one of the chief functions of the Wichita Bar Association is to aid in maintaining for the benefit of the public high standards of professional services and conduct and to that end it has organized and maintained certain committees such as the Committee on Unlawful Practice of the Law to protect the public against unqualified and unlicensed persons and corporations who may engage improperly and illegally in the practice of law and hold themselves out as authorized to practice law.

10. Plaintiff, in connection with the services rendered and offered to be rendered to his clients, has for more than the one year last past, rendered legal service and given legal advice to his clients as will be hereinafter more particularly described, all of which acts may be performed only by a person duly permitted to practice as an attorney and counsellor under the laws of the State of Kansas; that the plaintiff is and has been engaged in rendering services as follows:

a. Plaintiff has held himself out as being in a position to represent a debtor by adjusting, compromising, settling, paying-off or otherwise discharging the debtor's obligations out of funds deposited with the plaintiff by the debtor for distribution to the debtor's creditors on the basis of terms worked out by the plaintiff with the creditors.

[fol. 79] b. Plaintiff has at various times in the past, advertised that the plaintiff was in a position to represent debtors in the handling and adjustment of their financial affairs.

c. That in various other forms and through other means, including solicitation in person and by mail, plaintiff has appealed for clientele by representing that he will handle the financial affairs of persons troubled by debt and will "get them out of debt" and will "protect their credit rating".

d. When a debtor-applicant contacts the plaintiff, he is invited to fill out an "Agreement" in which he is to list each and all of his obligations, including date incurred and present balance. The debtor is interviewed by the plaintiff as to his ability to pay a stipulated amount in regular installments to the plaintiff for distribution to his creditors. The debtor is advised as to the amount of such installment deposits that he should make in view of his earnings and circumstances. The amount agreed upon is then inserted in the "Agreement".

e. If a satisfactory understanding is reached with the debtor as to the amount and times of the deposits, the debtor is called upon to sign a contract with the plaintiff providing for a fee to plaintiff, which is usually 25 to 30 per cent of the amount of the indebtedness.

f. Upon execution of the contract and with the payment of the first deposit, it is the practice of the plaintiff to then proceed to contact the creditors of the debtor-client, in such order or priority as to the [fol. 80] plaintiff may seem wise or expedient. When contacted a creditor is advised as to the total amount of the client's indebtedness and the amount and frequency of the deposits which are to be made by the client and the amount and the times of the installments which the plaintiff proposed to distribute to the creditor in payment in full or compromise. In the event a creditor is dissatisfied with the proposed arrangement, the plaintiff negotiates with the creditor in an effort to persuade the creditor to accept the plan or agree upon some variation thereof mutually agreeable to the creditor and plaintiff.

g. In dealing with an unsecured creditor to whom the debtor is obligated on an open account, such as doctors, dentists, department stores, local merchants, etc., the plaintiff may and often does endeavor to compromise the indebtedness and persuade the creditor to agree to settle for less than the amount of the account, even though the amount agreed upon is to be paid on a deferred basis. In concluding compromise agreements, stipulations of settlement, releases or statements of satisfaction on behalf of debtors, preparatory to execution the plaintiff fills in blank spaces on forms of such instruments prepared by plaintiff's attorney-at-law, who represents plaintiff regularly on a retainer basis.

h. In dealing with a creditor who is unwilling to extend the time of payments or enter into an agreement for the liquidation of the obligation in the future, the plaintiff has on several occasions advised the debtor to file a voluntary petition in bankruptcy under the [fol. 81] Bankruptcy Act.

i. In dealing with a secured creditor, the plaintiff may and often does agree to make full contract payments to the creditor on behalf of the debtor-client, where the creditor is not willing to extend the time of payments or otherwise vary the terms of the contractual arrangement. Where the security instrument has not been filed or recorded, the plaintiff negotiates with the creditor taking into consideration the rights and interests of the particular creditor, general creditors and the debtor.

j. The plaintiff indicates and represents to the debtor that he will work out a workable plan for the liquidation of the debtor's obligations; the debtor is led to rely upon the advice and guidance of the plaintiff.

11. The services so rendered by the plaintiff involve the application of legal knowledge and skill and the consequent rendering of legal advice and services in doing

and performing the acts heretofore set forth and described; these defendants therefore allege that the plaintiff has engaged in the unlawful practice of the law and that all such acts engaged in by the plaintiff are in violation of the laws of the State of Kansas in such cases made and provided.

12. By virtue of the facts heretofore alleged plaintiff does not come into court with clean hands, is not entitled to litigate the alleged invalidity of the statute and is not entitled to equitable relief.

Wherefore, these intervening defendants pray that the action be dismissed for want of equity and, in the alternative, for a determination that the statute is valid; for an [fol. 82] injunction against plaintiff's unlawful practice of law by engaging in the "debt adjusting" business.

/s/ Wayne Coulson
901 First National Bank Building
Wichita 2, Kansas
Attorney for Intervening Defendants

[fol. 83] [File endorsement omitted]

In the United States District Court
For the District of Kansas

[Title omitted]

Answer of Defendant William M. Ferguson, Attorney General of Kansas—Filed August 16, 1961

Count I

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

1. The allegations of paragraph 1 are admitted.

2. The allegations of paragraph 2 are admitted.

3. The allegations of paragraph 3 are denied.

4. The allegations of paragraph 4 are admitted, except that defendant denies that plaintiff will be irreparably injured unless defendant is enjoined from enforcing Senate Bill 366.

5. The allegations of paragraph 5 are admitted.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the first two sentences of paragraph 6; the allegations of the third sentence are denied; defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of the fourth sentence regarding bonding of [fol. 84] employees; the allegations of the remainder of the fourth sentence are denied.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the first clause of paragraph 7; defendant denies the second clause of paragraph 7.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8, except that defendant admits that plaintiff's business is prohibited by Senate Bill 366, and denies the allegations of the last sentence of paragraph 8.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation concerning the extent of plaintiff's contracts; defendant denies that Senate Bill 366 impairs the obligations of these contracts.

10. Defendant denies the allegations of paragraph 10.

11. Defendant admits the title to Senate Bill 366 is as alleged by plaintiff, but denies that the title violates Article 2, Section 16 of the Kansas Constitution.

12. Defendant denies the allegations of paragraph 12.

Count II

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

1 through 10. Defendant incorporates herein paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10 and 11 of the Answer to Count I as [fol. 85] paragraphs 1 through 10 of this Answer to Count II.

11. Defendant denies that there is an actual controversy between the parties in respect to which plaintiff needs a declaration by the Court as to the rights of the parties and the validity of a certain statute of the State of Kansas.

12. Defendant contends that Senate Bill 366 is a valid enactment of the Kansas legislature, but denies that he has authority to enforce its provisions against the plaintiff or threatens to do so.

Charles N. Henson, Jr., Assistant Attorney General,
Topeka, Kansas, Attorney for Defendant.

Certificate of Service (omitted in printing).

[fol. 86] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

[Title omitted]

ANSWER OF KEITH SANBORN, COUNTY ATTORNEY OF SEDGWICK COUNTY, KANSAS—Filed August 17, 1961

Keith Sanborn, County Attorney of Sedgwick County, State of Kansas, for his Answer to plaintiff's Complaint, states:

1. He denies every allegation of plaintiff's Complaint not expressly hereinafter admitted.

2. He admits plaintiff is an individual citizen and resident of Nebraska, and makes no contention regarding plaintiff's address. Admits plaintiff's operation under the name of Credit Advisors. Admits his residence and qualification as County Attorney and those qualifications of Attorney General, William M. Ferguson.

He denies this action arises under the Constitution of the United States, Article I, Section X, and Amendment Fourteen, Section I, or either of them. Diversity of citizenship is admitted. The jurisdictional sum of $10,000.00 being in controversy is not admitted.

[fol. 87] He admits this action is brought under Title 28, United States Code, and that the relief sought is an injunction. He denies the Senate Bill 366 is in conflict with the Fourteenth Amendment to the Constitution of the United States, Section I, and Article I, Section X of the Constitution, or either of them. He denies that any property interest of the plaintiff is unlawfully interfered with; that the statute is in conflict with the Constitution of the State of Kansas, Article II, Section 16, and further denies the jurisdiction of this Court to decide the Kansas Constitutional question.

The passage of the act, Senate Bill 366, as alleged in paragraph four, is admitted. Defendant denies that any legally protectable irreparable injury will occur to plain-

tiff. Defendant admits plaintiff's ownership of the business and denies that the acts are prohibited by the statute. Defendant makes no contention regarding the time plaintiff has been in business, but admits plaintiff has been doing business in Wichita, Kansas. Defendant admits plaintiff has invested money in the business in Wichita, but has no evidence sufficient to form a belief regarding the extent thereof.

Defendant denies future prosperity of Wichita and Sedgwick County will be adversely affected by the elimination of plaintiff's business. Defendant expressly denies the usefulness and desirability of the conduct of business of plaintiff when in truth and in fact said business amounts to the unauthorized practice of the learned profession of the law. Defendant denies that debtors are protected by the operation of plaintiff's business and denies that plaintiff nor his employees engage in a practice contrary to the public welfare and denies that the method of doing business [fol. 88] of plaintiff does not adversely affect the public welfare.

Defendant admits that he will and intends to enforce the criminal statutes of the State of Kansas of which Senate Bill 366 is one and that he has so advised plaintiff. Defendant denies that the existence of this Act deprives plaintiff of any legally protectable interest and further that equal protection of the laws is not involved.

Defendant makes no contention regarding the effect of the public policy of the State of Kansas on plaintiff's business. Defendant has no knowledge of which to base a belief concerning paragraph nine, but does deny that the existence of the Act impairs the obligation of contract, it being merely declaratory of the common law of the State of Kansas existing before the contracts were in effect.

Paragraph ten defendant denies. Paragraph eleven defendant denies. Paragraph twelve defendant denies. As to Count Two of plaintiff's Petition, defendant denies all allegations realleged and incorporated previously denied by the foregoing portion of this Answer. As to paragraph eleven defendant admits plaintiff deems himself aggrieved by the Law of Kansas, but denies any rights of plaintiff

are being infringed. Defendant admits paragraph twelve of Count Two.

For further Answer, defendant as County Attorney for Sedgwick County and the State of Kansas, alleges the practice of law is a learned profession licensed by the State of Kansas and supervised by the Supreme Court of the State of Kansas.

3. The court has adopted standards of knowledge, ability and character for its practitioners.

4. The court has inherent authority to and has fined matters comprising the practice of law.

5. Prior to plaintiff's setting up operations in the State [fol. 89] of Kansas and in Wichita, Kansas, particularly the practices in which plaintiff engages are and have been declared to be the practice of law. The statute of which plaintiff complains declares the public policy of the State of Kansas is not a new departure and merely provides sanctions for the unauthorized practice of law in addition to those already in existence.

6. Plaintiff is not a member of the bar of the State of Kansas and thus has not shown himself entitled to engage in the practice of law.

7. It is the duty of this court to support and protect the courts of the State of Kansas in limiting the practice of law to those duly entitled, qualified and authorized officers of the court.

8. The police power of the State is paramount under the Constitution of the United States and is entitled to protection of this court.

9. The public policy of the State of Kansas as expressed in the statute being attacked, the decisions of the Supreme Court of the State of Kansas and the customs and practices of the bar are entitled to the support of this court.

10. Said statute is an exercise of the police power of the State and is a power not delegated to the United States by the Constitution nor prohibited by it to the States and is reserved to the States respectively and to the people thereof

as provided in Amendment X to the Constitution of the United States.

11. For further Answer this defendant alleges that the suit itself is an attempt to violate the Eleventh Amendment to the Constitution of the United States by seeking to cause the judicial power of the United States to extend to a suit against one of the United States, the State of Kansas, by [fol. 90] plaintiff, a citizen of the State of Nebraska and the nominal defendants, Keith Sanborn, County Attorney and William M. Ferguson, Attorney General, are merely officers and agents of the State through which it exercises its reserve police power and the State is the real party in interest.

Wherefore, defendant, Keith Sanborn, prays this court to enter its judgment finding that the plaintiff has no legally protectable interest; that the acts of plaintiff constitute the unauthorized practice of law; that the statute declares the common law of the State of Kansas and declares the public policy of the State of Kansas does not contravene the Constitution of the State of Kansas or the United States and that it is valid in all respects. Defendant further prays that he have and recover his costs herein and such other and further relief that the Court deems just and equitable, and further that this action brought by plaintiff has caused expense to the State of Kansas and to Sedgwick County in particular for the preparation of the defense herein and for travel to the Court in Topeka, and that the bond posted by plaintiff herein was for the purpose of securing to the State of Kansas the expense and damage of the extraordinary exercise of authority in restraining the enforcement of the criminal law of the State and plaintiff should be required to pay a reasonable sum to indemnify the State of Kansas for the expenses of this proceedings, and for such other relief as may be deemed just and equitable.

Keith Sanborn, County Attorney.

[fol. 91] *Duly sworn to by Keith Sanborn, jurat omitted in printing.*

[fol. 105]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

Civil Action No. W-2434

FRANK C. SKRUPA, d/b/a Credit Advisors, Plaintiff,

vs.

KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.

Transcript of Hearing on August 17, 1961

APPEARANCES:

Hon. Walter A. Huxman, Judge, United States Court of Appeals for the Tenth Circuit (Ret.),

Hon. Delmas C. Hill, Chief Judge, United States District Court for the District of Kansas,

Hon. Arthur J. Stanley, Jr., Judge, United States District Court for the District of Kansas, Presiding.

Lawrence Weigand and Donald A. Bell, of the firm of Weigand, Curfman, Brainerd, Harris & Kaufman, Wichita, Kansas, and Ernest McRae, Wichita, Kansas, Appeared for Plaintiff.

Keith Sanborn, County Attorney, Sedgwick County, Kansas, Wichita, Kansas, appeared in person and by William Tomlinson, Deputy County Attorney, Sedgwick County, Kansas, Wichita, Kansas, and Artie Vaughn, Deputy County Attorney, Sedgwick County, Kansas, Wichita, Kansas.

[fol. 106] Charles N. Henson, Deputy Attorney General, Topeka, Kansas, Appeared for Defendant

William M. Ferguson, Attorney General for the State of Kansas.

Wayne Coulson, Wichita, Kansas, Appeared for Intervenors.

Harold Pittell, Official Reporter.

Be It Remembered, on this 17th day of August, A.D., 1961, the above matter coming on for hearing before the Honorable Walter A. Huxman, Judge, United States Court of Appeals for the Tenth Circuit (Ret.), Hon. Delmas C. Hill, Chief Judge, United States District Court for the District of Kansas, and Hon. Arthur J. Stanley, Jr., Judge, United States District Court, and the parties appearing in person and/or by counsel as hereinabove set forth, the folowing proceedings were had:

Mr. Weigand: Plaintiff is ready, if the Court please.

Mr. Sanborn: Defendant Keith Sanborn is ready, Your Honor.

Mr. Benson: Your Honor, the attorney general is present.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Coulson: I have an application on file for permis-[fol. 107] sion to intervene on behalf of the members of the Unauthorized Practice of Law Committee of the Wichita Bar Association.

Judge Huxman: Any objections?

Mr. Weigand: Your Honor, we would state in the record that, while we think it probably would be proper, if the Court deems it advisable to consider the appearance amicus curiae of the bar association, I don't believe the bar association or any member of the bar has any right to intervene in a three-Judge Federal court case which involves the constitutionality of the statute and which seeks enjoinment—enforcement of the statute by the law enforcement agencies, which is the county attorney and the attorney general of the state.

Judge Huxman: Do you grant their right to appear as amicus curiae?

Mr. Weigand: Yes, I think Your Honors could admit that, if you so desire.

Mr. Coulson: I will be glad to be heard on the motion to intervene, Your Honor. I think, in fact, I think we are entitled to intervene as a matter of right, and, if I am [fol. 108] mistaken in that view, I lean more strongly to the view that intervention is permissive as a party, not simply as amicus curiae.

Judge Huxman: Does it make any difference whether you intervene as a matter of right or amicus curiae?

Mr. Coulson: I can't see that it does, in any practical way.

Judge Huxman: The effect will be the same. You are in for whatever you have to submit on behalf of one of the sides of this issue.

Mr. Coulson: I believe that is true.

Judge Huxman: You may file your petition of intervention. The Court will treat it in the nature of an amicus curiae appearance, whatever the nature, it makes no difference in the ultimate result.

Let's have all the appearances, so the reporter gets them.

Mr. Henson: Charles Henson, assistant attorney general, appearing on behalf of William Ferguson, the attorney general.

Mr. Sanborn: Keith Sanborn, County Attorney of Sedg- [fol. 109] wick County, on behalf of the State of Kansas.

Mr. Tomlinson: William Tomlinson, Deputy County Attorney for the County of Sedgwick, Kansas, on behalf of the State of Kansas.

Mr. Vaughn: Artie Vaughn, Deputy County Attorney, State of Kansas, on behalf of the defendant.

Mr. Coulson: Wayne Coulson, Wichita, on behalf of Wilbur D. Geeding, Robert A. Coldsnow, Ralph Foster, Guy L. Goodwin, Donald B. Clark, William Porter, Julian H. Ralston, Cliff W. Ratner, Robert J. Roth, Robert M. Siefkin and J. Edward Taylor, Jr., as members of the Unauthorized Practice of Law Committee of the Wichita Bar Association.

Mr. Weigand: Lawrence Weigand and Donald Bell, and Mr. McRae, of Wichita, for the plaintiff.

If the Court please, with respect to the character of the appearance of the Sedgwick County lawyers' committee, they have filed what they denominated a counter claim in this action. It is the position of the plaintiff that there is no basis for a counter claim by amicus curiae, or for an [fol. 110] intervenor to counter claim, in an action such as this, where the sole issue is the constitutionality of a state statute.

Judge Huxman: What do they seek by virtue of their counter claim?

Mr. Weigand: They seek to make allegations respecting various practices which they say are the unauthorized practice of law, most of which are not encompassed or in any way relevant to the particular wording and scope of the statute in question, and it broadens the matter into what might be termed a state court proceeding for the unauthorized practice of law and has no relevancy to the scope of the statute which we are questioning here.

Judge Huxman: They seek no affirmative relief in any way, do they, Mr. Weigand?

Mr. Weigand: I think they seek an injunction, if the Court please. The prayer in this petition is as follows: "Wherefore, these intervening defendants pray that the action be dismissed for want of equity and, in the alternative, for a determination that the statute is valid; [fol. 111] for an injunction against plaintiff's unlawful practice of law by engaging in the 'debt adjusting' business".

Judge Huxman: With the exception of the last, the rest is the same relief sought by the defendant, isn't it, the dismissing of the complaint?

Mr. Weigand: Yes—

Judge Huxman: So the only—they ask for an injunction, that is the only affirmative relief that isn't sought by the defendants.

Mr. Weigand: What I wish to call Your Honors' attention to is the allegations of the complaint which go beyond the scope of the inquiry of this court in this matter, which

pertains solely whether or not the statute, as passed by the legislature, is valid and constitutional.

Mr. Coulson: The relief prayed for by the intervenors is, first, that the action be dismissed for want of equity. Only in the alternative—

Judge Huxman: Does the defendant also ask for that relief?

Mr. Coulson: I am not able to answer that. I think he asks for a determination that the statute is valid. We ask [fol. 112] for a determination if the statute is valid only in the alternative. We contend that the action should be dismissed for want of equity without ever reaching the validity of the statute, and, in the alternative, we ask that the statute be held valid and for an injunction against the practice of law.

Judge Huxman: Here is the way the Court feels about this, gentlemen: The only thing we are concerned with is whether this statute violates any provision of the Federal Constitution, whether it is invalid under the provisions of the Federal Constitution; whether it is equitable or inequitable, that might be a matter for the state court. But it isn't before this court. You can present anything you want to, but we are going to determine whether the inhibition of this statute violates the plaintiff's right under the Fourteenth Amendment to the Constitution. That is the only thing we are interested in.

Mr. Coulson: I have just checked the answer of the defendant Sanborn, who makes the same—asks for the [fol. 113] same relief; the basis for it is that the plaintiff is not entitled to be heard on whether or not the statute is constitutional or not.

Judge Huxman: Well, that might be a question, whether the plaintiff has a right to maintain this action. I suppose that—

Mr. Coulson: That is exactly what the intervenors' prayer goes to, and, also—

Judge Huxman: Do you base that on the ground that it would be inequitable for them to maintain this?

Mr. Coulson: No, sir, that they don't come into court with clean hands. He is engaged in an illegal practice and is not entitled to an adjudication that an act barring that practice is valid or invalid.

Judge Huxman: Here is the way the Court presently feels about this question, that here is a charge that this statute is void, I understand, because it violates the Federal Constitution, impinges upon the plaintiff's rights guaranteed by the Federal Constitution. Now, there may be subsidiary questions that enter into the determination of that question. Is that the main thing that we have in this case?

[fol. 114] Mr. Coulson: I think that is true. This only is a challenge of their right to be heard on that subject.

Judge Huxman: If the statute prohibits something that the plaintiffs have a right to do under the Federal Constitution, it is void. We will all agree to that, won't we?

Mr. Coulson: Yes, sir.

Judge Huxman: And if it doesn't, isn't this case at an end?

Mr. Coulson: That's right, this particular point goes to the question of whether they have a right to do it. Our contention is that they don't—didn't have the right to do it, statute or no statute, and so the statute couldn't have affected their rights.

Judge Huxman: With this explanation by the Court that we are primarily concerned with the question of whether this statute violates the rights guaranteed by the Federal Constitution, now, it may be that we have to consider some subsidiary questions, personally, speaking for myself, I fail to see that it makes any difference to that question, whether it is clean hands or unclean hands. But, [fol. 115] if the parties want to present that question, why, we have no objection to it. We will do that, and then whether we are going to give much weight to that question or not will be for the Court's determination when we come to—

Mr. Coulson: Very well.

Judge Huxman: Are we, then, at an understanding as to how we are going to proceed?

Mr. Henson: Your Honor, I would like to call the Court's attention to the motion of the attorney general to dismiss the action as to him.

Judge Huxman: We will hear that as part of the general hearing today; that is a question, of course, peculiar to the attorney general, isn't it?

Mr. Henson: Yes, sir.

Judge Huxman: He contends, in any event, they can't sue him, is that his position?

Mr. Henson: We contend that this complaint pleads no cause of action.

Judge Huxman: We will hear you with respect to that. [fol. 116] Now, gentlemen, one other thing, as to the scope or extent of this question, I think, we just had an informal discussion, and I can say for myself that I am more concerned with an adequate brief on these various questions than I am with the law—with oral argument as to what the law is. What I would like, myself, is a statement of the parties as to their various positions on this question. At the conclusion, I want a brief. What do you say, Chief Judge?

Judge Hill: I would prefer that, myself.

Judge Huxman: Judge Stanley, what do you say?

Judge Hill: We are going to take the matter under advisement, anyway.

Judge Huxman: Oh, yes.

Judge Hill: And you are going to have to write briefs for us.

Judge Huxman: It is an important question. With that in mind, suppose we let the parties proceed, so, Mr. Weigand, I guess the burden is—

Mr. Weigand: There was certain testimony taken in [fol. 117] front of Judge Hill on the application for the temporary restraining order. Would the county attorney and the attorney general agree that that transcript can be submitted in lieu of a repetition of the same testimony by the witness?

Judge Huxman: Is that agreed to by the defendants?

Mr. Henson: We would not, by entering into such an agreement, want to admit that we are a proper defendant in the action.

Judge Huxman: That is very true.

Mr. Henson: With that reservation, we will agree to it.

Judge Huxman: There is no claim that this transcript is not a correct transcript of what took place before Chief Judge Hill, is there?

Mr. Sanborn: No, sir.

Judge Hill: And that it may be considered as evidence before the three-Judge Court on behalf of the plaintiff, subject, of course, to any objection that you may want to lodge against it?

[fol. 118] Mr. Henson: Yes, sir.

Mr. Sanborn: Yes, sir.

Mr. Weigand: Now, there were no objections, if I remember rightly, except those we interposed, which we will withdraw in this hearing. If there are any other objections to the competency or relevancy of this testimony, I think it ought to be noted in the record, so we can be advised as to what is being challenged.

Judge Huxman: Suppose you offer the transcript, Mr. Weigand, and then the other parties will have an opportunity to make objections to it, if they want to.

Mr. Weigand: Do you wish this marked, Judge?

Judge Huxman: Mark it as an exhibit. Judge Hill tells me it is a part of the record in this case, anyway. It is already in the record.

Mr. Weigand: Yes.

Judge Huxman: Does anybody want to lodge any objection as to why we shouldn't consider it?

Mr. Sanborn: We don't, Your Honor, and I might not [fol. 119] be correct, but we did file, as a part of our answer, the defense that this is, in fact, a case prohibited by the Eleventh Amendment to the Constitution of the United States, in that it truly is an action by a citizen of Nebraska against the State of Kansas, and I am only stating that because we did plead it.

Judge Huxman: All right, you may proceed, Mr. Weigand.

Mr. Weigand: Now, there will be some additional testimony to supplement this record, and not to duplicate it, if the Court please. If you are ready now—or would you prefer that I make an opening statement with respect to the plaintiff's position?

The challenge is simply to the validity of the Senate Bill 366, for the reason that it violates the Fourteenth Amendment to the Constitution of the United States, the Kansas Bill of Rights, Section 1, and Article (2), Section 16, of the Kansas Constitution, and is void and unconstitutional

and cannot be enforced against this defendant—plaintiff, rather, who is a person engaged in doing the specific act which is prohibited, or allegedly prohibited, by the act, [fol. 120] and that it is not a regulatory act, but it is a prohibition act, with respect to a lawful business, which is subject to regulation but not subject to prohibition, and we rely upon Adams v. Tanner, Supreme Court of Pennsylvania, which passed upon—

Judge Huxman: Now, that is your argument, Mr. Weigand?

Mr. Weigand: I thought you wanted a—

Judge Huxman: You state to us what your position is and not make your argument.

Mr. Weigand: I was simply outlining the position so you could follow the evidence that we supplemented before we put it on, but I can put on the evidence first.

Judge Huxman: You are making your opening statement now?

Mr. Weigand: Yes, just an outline of the plaintiff's position.

Judge Huxman: All right, you proceed.

Mr. Weigand: It is the position of the plaintiff, who is a resident of Nebraska and who has, for some three or [fol. 121] four years, been engaged in this business in Nebraska, and also other states, and who has been engaged in this business lawfully in the State of Kansas since—for a portion, about eight months, of 1960, long prior to any enactment of this act; that his activities do not constitute the giving of any kind of advice or the drawing of any legal instruments that are, in fact, a legal matter; that he does give financial advice to people who, through credit buying, have not the means currently to pay all of their debts as they mature, and this act prohibits not the doing of that, if done once, but the doing of it if done periodically; that it is a prohibition of a lawful business rather than a regulation of it, and that it is, as I said, unconstitutional and void, because, first, it deals with more than one subject matter, contrary to Article (2), Section 16, of the Kansas Constitution, it doesn't have in its title the matter that they complain about with respect to the practice of law, it violates the pursuit of happiness guaran-

teed to him by the Fourteenth Amendment, which is the right to pursue any lawful calling, subject only to reasonable regulation and not prohibition, and that, therefore, the [fol. 122] statute is void and unconstitutional and cannot be enforced against him under the due process clause of the Federal Constitution.

Mr. Sanborn: Very briefly, the position of the State of Kansas, so far as I am concerned in a representative capacity, is that the business, so-called, has been declared, by judicial act of the Supreme Court of the State of Kansas, as long ago as 1935, and by the District Court of Sedgwick County, Kansas, both at that time, and with respect to this same defendant, prior to the passage of the statute about which they are complaining, to be the practice of law and the unauthorized practice of law, and the statute merely gave an additional remedy to the inherent authority vested in the Court to govern persons who would be practitioners of the law, including the United States District Court for the District of Kansas, which has jurisdiction in all sorts of matters, including, very particularly, wage earner plans in bankruptcy, and that, when this statute was passed, it merely supplemented remedies already in existence and merely declared the public policy, as expressed by the legislature of the State of Kansas, to be [fol. 123] that a criminal sanction would attach to this unauthorized practice of law, and the statute clearly points out that it does not prohibit, it isn't a prohibitory statute, it merely limits the practice of law to those who are amenable to the discipline and the ethics and the control of the courts of the State of Kansas and of the United States sitting in the State of Kansas; and that, whether this statute were passed or not would not affect the unlawfulness of the defendant's conduct—pardon me, the plaintiff's conduct, and that is the reason that he has no standing here, that what he did—any contract he entered into he knew was subject to the police power of the State of Kansas and to the control in the state of who would be its practitioners, so nothing was added by the statute except a formal—an extra remedy, and that he knew, or should have known, before he ever attempted to set up this business in the State of Kansas that it was unlawful in the state.

Mr. Coulson: Very concisely stated, it is the position of amicus curiae that the plaintiff had no legal right to engage in the business which is prohibited by the statute, [fol. 124] and that, therefore, the statute could not have deprived him of any property rights of any kind or character, or of any personal rights.

It is the position, secondly, of the amicus curiae that the legislature had the right to determine that, whether or not this was the practice of law, it required, for the protection of its citizens, the giving of advice, which this agency does not, or claims it does not, give, and was a lawful exercise of the police power of the State of Kansas, and that the Constitutional provisions mentioned by Mr. Weigand yield to the legitimate police power of the State of Kansas.

Judge Huxman: Mr. Coulson, just one question: Suppose it is subject to police power of the state, does that give the state the right to prohibit it or to regulate it?

Mr. Coulson: We contend there is no prohibition. There is a limitation to those who are authorized, who are licensed.

Judge Huxman: Well, they can't carry on this business, can they, in Kansas?

Mr. Coulson: If they are licensed, yes.

[fol. 125] Judge Huxman: Can they get a license?

Mr. Coulson: If they are admitted to the practice of law, just as you and I. That is the license.

Judge Huxman: Well, then, it prohibits the carrying on of this business by anyone but licensed attorneys?

Mr. Coulson: Exactly. It does that.

Judge Huxman: Then—and they are admittedly not attorneys?

Mr. Coulson: That's right.

Judge Huxman: Therefore, they are prohibited from carrying on this business in Kansas?

Mr. Coulson: They are until they become licensed.

Judge Huxman: Certainly, but they are not licensed attorneys and, therefore, they are prohibited under the statute?

Mr. Coulson: That is absolutely true, Your Honor, yes, sir.

Judge Huxman: Now, that is a question that, under the [fol. 126] police power to regulate, this is such a business that the police power could authorize the prohibition, unless they first go through law school and become practicing lawyers, that is the question?

Mr. Coulson: That is the question before Your Honor.

Judge Huxman: It is a difficult question; at least, presently, it is to me. It may become clear when I get the briefs.

Mr. Coulson: Obviously, we aren't agreed, Your Honor, or we wouldn't be taking up your time here.

Judge Huxman: Are there any further statements by any of the parties?

Mr. Weigand: Might I clarify one thing with respect to the positions: The position taken by Mr. Coulson, I submit, by a careful reading of this text, is not open to the lawyer engaged in the general practice of law if he limits himself solely to this business. Even a lawyer, you or I, Judge, could not carry on the debt adjusting business if we do it exclusively, as this act is worded. We can only do it if we incur it incidental to the general practice of [fol. 127] law, which is an arbitrary and unreasonable thing, even if it was otherwise justified, and I wanted to emphasize the position, the issue, with that statement, because you can see clearly from a reading of this, from the Pennsylvania Supreme Court, which upheld the contention that this identical act, under a different label, labeled "budget planning" instead of "debt adjusting", and the only difference, the identical words passed by the legislature of Pennsylvania in 1955, we submit, were adopted by Kansas after the Pennsylvania courts had declared that act unconstitutional; and there is also a rule of law that, when a state adopts a statute from another state, it adopts the construction of that statute by the state, and I submit, Your Honor, that that is a point—

Judge Huxman: Mr. Weigand, that is true, ordinarily, when they adopt a statute, but if they adopt a construction the courts have placed upon it, saying, "You can't do that", why would they pass the act?

Mr. Weigand: I don't think, Your Honor, this act was ever adequately considered, but that is a factual matter [fol. 128] that I think is closed to us in this proceeding.

Judge Huxman: I'll go with you that, when one state adopts a statute of another, they adopt the ordinary construction placed upon that statute, but it would be a little difficult for me to go so far as to say that they adopt a construction which says you can't do it.

Mr. Weigand: The construction which the Pennsylvania court placed upon it said that the act itself means a situation that is forbidden by the Constitution of the United States.

Judge Stanley: Mr. Weigand, this was the Supreme Court of Pennsylvania?

Mr. Weigand: Superior Court of Pennsylvania. I don't know whether it is the supreme. It is in 155 Atlantic (2d), and it is the superior court.

Judge Stanley: The appellate court?

Mr. Weigand: Yes.

Judge Stanley: Was that decision based on the decision of the court that the act violated the Constitution of the [fol. 129] State of Pennsylvania?

Mr. Weigand: No, of the United States and, also, the Pennsylvania Supreme Court, Mr. Bell tells me, did the equivalent of denying certiorari to the superior court, that that is a final decision in Pennsylvania, and the Pennsylvania court predicated it on Adams v. Tanner, and, as late as May of 1960, the Supreme Court of Kansas quoted the Adams v. Tanner ruling that was adopted there and applied it to the unconstitutionality of a state statute which was challenged by a resident of Kansas in Kansas, called the Auctioneer's Itinerant Veteran Act.

Judge Stanley: I assume you will mention that in your brief.

Mr. Weigand: It will be in the brief, Judge.

Judge Huxman: Do either of the parties litigant want to address the Court on the issues before we hear from the attorney general as to his motion to dismiss the attorney general in this action? If not, we will hear from the assistant attorney general as to why you think we ought to dismiss the attorney general.

Mr. Henson: Your Honor, if I may give the Court a [fol. 130] little background. We filed our motion to dismiss, Your Honor, I believe it is Rule 12(b), some time ago, believing at that time that our motion could be heard prior to the time the Court heard this matter on the merits. We were informed by a member of the Court that that would be impossible. Therefore, we filed an answer, which we believe amounts to a general denial of the plaintiff's complaint, and in our answer we have reincorporated the grounds of our motion to dismiss.

Briefly stated, we feel that plaintiff's complaint, which alleges the passage of Senate Bill 366, alleges that the Senate Bill is applicable to him and his business and that the attorney general, having over-all supervision of criminal prosecutions in the State of Kansas, has indicated that said statute, Senate Bill 366, is valid and should be enforced. We would like to call to the Court's attention, first, the fundamental rules often announced by the Supreme Court of the United States, that the judicial power of the United States extends only to cases and controversies. They have said that a case or controversy is a judi- [fol. 131] cial action in which parties present present adverse interests whose contentions are submitted to the Court for adjudication. That is from the case of Muskrat v. United States. And, in a very recent case before the United States Supreme Court, the case of Poe v. Ullman, in 367 U.S. 497, which appears in 29 Law Week 4820, in which the Supreme Court of the United States refused to pass upon the constitutionality of the laws of the State of Connecticut forbidding the sale of anti-contraceptive devices because the plaintiffs had failed to show that there was any real threat of enforcement of that statute against them by the defendant, the Court called—in their opinion, called attention to the series of rules which the Federal courts have developed under which they avoid passing on constitutional questions, unless necessary to decision of, and I quote, "antagonistic demands actively pressed which make resolution of the controverted issue a practical necessity". We think it is inherent in that statement that the demands actively pressed must be pressed by the defendant.

Judge Huxman: Is it your position that the attorney general is not a proper party bceause there is no immediacy [fol. 132] of enforcement by him, there is no threat of enforcement, and, therefore, there is no controversy, or that, in any event, he isn't a proper party?

Mr. Henson: We feel that this complaint as it is stated, which does not plead that the attorney general has been directed by the Governor of Kansas to enforce this statute—

Judge Huxman: Is it your position that the attorney general will not undertake to enforce this statute?

Mr. Henson: We contend that, under the facts as plead in the complaint, which, I think, is all that our motion to dismiss goes to, do not constitute a cause of action.

Judge Huxman: We have been liberally construing pleadings and, if it is a fact that the attorney general has no intention of enforcing this statute, then there might be a question that there is no actual controversy, but suppose the attorney general, in fact, is intending to enforce it, then it may be an effective allegation that he is doing that—

Mr. Henson: I will tell the Court now that, as the at-[fol. 133] torney general views his powers, he has no right to file a criminal information in the district courts or the county courts of the State of Kansas.

Judge Huxman: He has a right to direct county attorneys to enforce the law, doesn't he?

Mr. Henson: We do not think that he has the right to direct the county attorney to file a criminal case or to file one himself, unless directed by the governor to do so. He does have the right to file ouster proceedings against a county attorney who he feels is not fulfilling the duties of his office, but, because of that right, he doesn't feel that it is his province to usurp the discretion of county attorneys in enforcing the criminal law within their counties. We feel that the Statutes of Kansas give the attorney general the right and the duty to appear before—appear on behalf of the state in the supreme court. We feel the statutes give that right and duty to the county attorney, as far as district courts are concerned. Senate Bill 366 is a criminal statute.

Judge Huxman: Then your position, if I get it, as far as the attorney general is concerned, is that he has no part [fol. 134] in the enforcement of this statute and, therefore, he is not a proper party?

Mr. Henson: We feel, as a matter of law, that he has no part in the enforcement of this statute under the facts plead in the complaint; therefore, he is not—

Judge Huxman: Does he have any part by virtue of his office in the enforcement of the statute?

Mr. Henson: Of this particular statute?

Judge Huxman: Yes.

Mr. Henson: Well, if he felt that a county attorney was being delinquent in his duties.

Judge Huxman: In enforcing the statute—

Mr. Henson: In carrying out the duties of his office, so as to justify that he be ousted from office, in failing to enforce the law, I suppose the attorney general would file such actions, but I can assure the Court that he does not intend to interfere with the lawful powers given county attorneys to exercise their own discretion. It would have [fol. 135] to be a pretty arbitrary and extreme case before he would proceed, and, therefore, because of the view which we take of the attorney general's powers, we feel that we are asserting, at this point, no antagonistic interest to this plaintiff and, therefore, we feel that we are not, at present, involved in the case in controversy with this plaintiff. We have a difference of opinion, perhaps, as to whether this Senate Bill 366 is valid, but differences of opinion, we submit, do not amount to cases for judicial consideration, particularly where a Federal court is asked to annul the validity of a state statute.

Judge Huxman: I get your position, then, to be that, at present, the attorney general is not contemplating any affirmative action looking toward the enforcement of this statute.

Mr. Henson: That's correct, under the facts as they now exist. We feel we do not have the authority to do so under the facts as they now exist.

Judge Huxman: Mr. Weigand.

Mr. Weigand: If Your Honor please, we have searched [fol. 136] for the reason, if the attorney general does not

want the onerous duty of trying to uphold this invalid law, we would welcome it if we could be assured that he would not take any subsequent action, and, in the application for the restraining order, Judge Hill will remember, I asked counsel if he would assure us, if he was not enjoined, he would not take any action to enforce this statute against us, and that was refused.

Now, there hasn't been an overt threat, an actual statement by the attorney general that "I am going to enforce this statute against you", but, in the case that I mentioned in 186 Kan., decided May 1960, by the Kansas Supreme Court, the county attorney of Cowley County, which was the place where that resident lived, and the attorney general of the state, were both named by the state, the Supreme Court of Kansas considered the matter and upheld the contention of the plaintiff as against both the attorney general and the county attorney, that the statute was unconstitutional. We have made a search of the cases where the Kansas Supreme Court has knocked down statutes with respect to the title not being sufficient to encompass all [fol. 137] of the subject matter of the act, and there are several of those cases, and in the case of Capital Gas & Electric, the case was against Boynton, the attorney general, we have found no precedent where the attorney general has been left out, validly, of a state statute. There are cases against city ordinances where he has not been made a party, but, with respect to a state statute, we can find no case where he has been omitted, and we have found cases which lead us to believe that he has a common law duty to enforce every act of the State of Kansas which he considers valid.

Now, if he will state that he considers this invalid, then he would have no duty to enforce it and he could be out, but, unless it is invalid, if it is a statute of the State of Kansas and it isn't prosecuted—Keith Sanborn has got no jurisdiction outside of Sedgwick County. My client may desire to go to Topeka and open one of these offices, may desire to go to Kansas City, Kansas, and open one of these offices. The county attorney there may not prosecute. Will the attorney general permit the statute to rest unenforced? We think not, and we think—we do not have to have an overt

[fol. 138] threat of the chief law enforcement agency of the state with respect to the constitutionality of the state statute—we have a brief on the matter.

Now, if Your Honors would decide that he has no duty to enforce this and he is not going to, so we are protected in the event that you find that this statute is unconstitutional, fine and dandy, we have no desire to bring him in if he doesn't desire to uphold the statute, but we do desire to protect our client's interest against what we consider to be an unconstitutional statute, in the event you so determine that we are correct in that position.

Mr. Henson: Your Honor, it is really not up to us to furnish the type of action that will fully protect the interests of Mr. Weigand's clients. We feel that, if a county attorney in some county other than Sedgwick County would file an action against his clients under Senate Bill 366, that that would be within the discretion of that county attorney, and the fact is that we don't feel that he can get a binding adjudication on all county attorneys of the State of Kansas by joining the attorney general, because we don't think we have power to control all 105 county at-
[fol. 139] torneys in the State of Kansas.

Now, as to this case in 186 Kan. involving the New Goods Public Auction Law, it is true that the attorney general was a party in that action. However, whether or not the case stated cause of action against the attorney general was never raised in that case, was never passed upon by the Supreme Court of Kansas. We are raising it in this case, and we feel properly so. We feel we should not be involuntarily joined as a defendant in any case where an individual wants to assert the unconstitutionality of a state statute. We feel we are proper parties only when we are proposing, or they plead that we are proposing, to take some action which affects their interests. We do not believe the plaintiffs do so in this case.

Judge Huxman: Is there anything else by the attorneys for either the plaintiff or defendants? You have stated your position.

Mr. Weigand: We have a memorandum brief that we can submit on the matter.

Mr. Sanborn: Your Honor, I would like to say that we are sorry about the error into which the Supreme Court [fol. 140] of Pennsylvania has been led, but other courts of last instance, such as the Massachusetts Supreme Court, have viewed the Constitutional issues differently.

Judge Huxman: You can set that out in your brief, of course.

Mr. Weigand: If Your Honors are ready to hear evidence now—

Judge Huxman: Do you want to put on additional evidence?

Mr. Weigand: Supplementary evidence to the record that we made.

Judge Huxman: Before we make a final disposition, suppose we proceed with that.

* * * * * * *

[fol. 141] Judge Huxman: You may call your first witness.

FRANK C. SKRUPA, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Bell:

Q. Will you state your name and address, please.

A. Frank C. Skrupa, Omaha, Nebraska.

Q. You are the same Mr. Skrupa that testified before Judge Hill on a hearing on a temporary restraining order?

A. Yes, sir.

Q. Now, we will attempt here not to be repetitious of any testimony that appears in the previous transcript, since that has been admitted. But, to lay a foundation, you testified at that time that you were engaged in business in Omaha and Wichita, and that your business consisted of what is defined by Senate Bill 366 as the busines of debt adjusting, is that correct?

A. That's right, sir.

Q. Now, disregarding a question as to whether or not the title "debt adjusting" is appropriate, but understanding

that we are talking about the business which is attempted [fol. 142] to be prohibited by the Kansas act, can you give us an idea, a little background, on how long this business has been going on in the United States, how extensive it is, and exactly what it does?

A. Well, sir, the business is nothing new. I personally know of a company in Minneapolis and one in Detroit that has been in existence for a quarter of a century, at least, and they both have excellent reputations and—in both of those states there are regulatory provisions, they are licensed. As a matter of fact, Michigan just recently passed a licensing bill. There have been—in Omaha, there were businesses there long before mine, for, at least—in fact, I know the manager—the ex-manager of the one place, and he tells me they would have been there, I believe, their tenth year. I have been in business there since August of '58. Previous to that time, I had some experience in that business in Detroit, Michigan, and the fellow that I was in business with, my ex-partner, he has a number of offices throughout the east, in Illinois and Indiana and Michigan.

Q. How extensive, if you know, then, is this type of business throughout the United States?

[fol. 143] A. Well, sir, I would say that there is, probably, in every large city, every metropolitan area, there is someone engaged in this practice.

Q. Is this always run by private businesses or—

A. No, sir, it is not. As a matter of fact, in several places, I know of one personally in Phoenix, Arizona, that is a mutual thing that has been set up by a number of creditors, and they have set this up for the purpose of helping themselves and helping people who are their debtors to get out of debt; and I have also heard, in places, although I have no proof of this, that this is also—has also been done by an agency of the Community Chest.

Q. Can you tell us what there is in our society that gives rise to this type of business?

A. Well, sir, I think we all know that the credit business, and the consumer credit business, in particular, has gone up spectacularly since the end of World War II. As a matter of fact, the yearly amount of interest just on consumer debt, not industrial debt or property debt, amounts to eleven billion dollars a year. Now, certainly, this is going

to affect a lot of people and there is going to be a lot of people in debt that are unable to handle this situation themselves.

[fol. 144] Q. What types of people and in what situations are these people when they come to you for financial help?

A. Well, sir, when these people come to us for financial help, they come from all walks of life. I would say, primarily, that they are what you would call the working man, but we do deal with all types of people and from all backgrounds. As a matter of fact, we have clients that come to us who have no financial problem at all, salesmen, for instance, who are on the road a great deal and simply find this an easier method of disbursing their funds to their creditors. We merely set up a payment arrangement with them, they pay us so much each pay day, and we distribute this to their creditors for them. That's all we do, we don't give any other type of advice except financial.

Q. How about the people who actually have a financial or budgeting problem?

A. We attempt to work out a program to fit their bills within their income and satisfy their creditors over a period of time.

Q. Are those people that don't have enough income to meet these payments, or—

A. That's right. They either do not have enough income [fol. 145] to meet these payments, or, I would say, roughly speaking, that 50 per cent of the people that come to us do have enough money to meet these payments, but simply do not have the—either the mental attitude or the ability or the desire to do this themselves, and let it go, and constantly find themselves in economic difficulties.

Q. Where do these clients come from that come to you?

A. Many of them come from referrals. We have—from other clients. Some from other creditors, and, also, we do advertise.

Q. Where are these people referred from? I'm sorry, I didn't—

A. Some are referred from clients that we already have or customers that we already have, and some are referred, quite a few of them are referred, from creditors who realize that these people—they are having some problem.

Q. Have you ever had any referrals from banks?

A. We have, yes; in Wichita, we have had a number of referrals from the Fourth National Bank; in Omaha, we have referrals from everyone, including, by the way, attorneys, collection attorneys.

Q. You have had referrals from attorneys?

A. Yes, sir, very definitely.

[fol. 146] Q. Do you know whether or not there have been any complaints filed against you with the Better Business Bureau in either Omaha or Wichita?

A. No, sir, to the best of my knowledge, there have been no complaints filed.

Q. You have done some checking on this?

A. Yes. Well, we don't do the checking so much as the people that come to us do. We are often told, "Well, we called the Better Business Bureau; you're fine by them".

Q. Can you give us any idea as to the number of people that, in your opinion, you have given some financial assistance to in the last three years?

A. Well, it would depend on where you draw the line and what their own feelings in the matter were, but, simply, it's been over a thousand. If they are clients of ours for at least two or three months, I know that we have given them some help. They don't have to be paid out with us in order for them to receive help.

Mr. Sanborn: Excuse me, I would like to get some idea, so I will understand, whether we are talking about the State of Kansas, something within this man's knowledge or just visiting. I can't delimit it.

Mr. Bell: Plaintiff is attempting to show that this is [fol. 147] a lawful business, that it is recognized as a business which is helpful to the community as a whole, in the broad sense, and that it is not inherently immoral or dangerous to the public welfare, and I think, in that connection, we are entitled to show not only its Wichita operation, but his Omaha operation. I would be glad to have him testify that his testimony applies to both operations. We are simply trying to show a broad prospective for this type of business.

Judge Huxman: I think you have a right to show the general nature of that business, but it seems to me that you

have done that, and going into great detail, broad expanse of the country, is hardly necessary, is it?

Mr. Bell: I will ask no further questions, Your Honor, along that line.

By Mr. Bell:

Q. Mr. Skrupa, can you tell us, you have alleged in your petition that you will be irreparably injured by the enforcement of this statute. Can you tell us what effect just the mere existence of this statute has had on your business?

A. Well, I believe it was in March that we had a total of some 250 accounts, and I think that since that time, approximately, now, we have anywhere from 150 to 175, and, of [fol. 148] course, this adverse publicity has done us no good.

Q. And do you know of specific instances where debtors have refrained from continuing their plan of payment through you merely because of the existence of this statute?

A. Yes, I know of it through the statements of our local manager.

Q. And you have previously testified, which will appear in the transcript, the effect that the enforcement of this statute would have on your business, and I don't think it is necessary to go into that at this time.

Mr. Bell: I believe that is all, Your Honor.

Judge Huxman: Any cross-examination?

Mr. Sanborn: Yes, sir.

Cross examination.

By Mr. Sanborn:

Q. You have not had any referrals from lawyers in the State of Kansas, have you?

A. I wouldn't know that, sir.

Q. You do not know of any referrals from any lawyers, do you?

[fol. 149] A. I, personally, do not know of any. I have heard that there was, but I wouldn't want to say there was.

Q. In the conduct of your business you purchase advertising, do you not?

A. Yes, sir.

Q. And in your advertising you hold out that you can solve the financial problems of persons who aren't able to pay their debts, don't you?

A. Yes, sir, within reason.

Q. And you state by your advertising that you can set up a schedule and cause their debts to be retired, if they will follow your plan which you advertise, is that not right?

A. That's right.

Q. And when people answer these advertisements and come to your office, do you find that they are people who are indebted and are having trouble with their creditors?

A. Yes.

Q. And do you find they are people who have been pressed by creditors for the payment of money?

A. Some of them; not all of them.

Q. About how many of them would you say are people that are worried about not being able to pay their bills and read your ad and come in, or listen to your TV—

[fol. 150] A. All of them have a problem, but it is not necessarily one that they are being pressed. They may anticipate a problem.

Q. We are just discussing, I hope, the ones that just aren't able to take care of their problems.

A. All right.

Q. Now, about what part of your business is that?

A. Well, sir, again, actually, they wouldn't be there unless they thought that they had some problem that they couldn't handle it; they are not going to come to us to pass the time of day.

Q. You hold out that you—

A. Unless I don't understand your question.

Q. You hold out that you consolidate people's debts, too, don't you?

A. Yes, sir.

Q. And you hold out that a person who owes $3,000 can pay as little as $35 a week under your plan?

A. Yes, sir. We say, "You may pay as little as $35 a week".

Q. Do you also hold out that people need no security to come to see you?

A. No, sir, they don't need any security—

Q. That they need no co-signers?

[fol. 151] A. That's right, they do not.

Q. You do have them execute promissory notes, don't you?

A. I think we did at one time. I'm not so sure—in fact, I know it is no longer being done.

Q. When did you stop doing that?

A. Oh, some six months ago, but I might add that we have never attempted to collect on one of our promissory notes after a client left our services.

Q. What is your initial fee that you charge people who come in?

A. We have no initial fee. There is no charge to come into our office and talk over a man's problems.

Q. Did you bring with you, at our request, the records pertaining to Mr. Hedrick?

A. I believe our attorneys have them.

Q. Have you gone over these—the names of these people we submitted to you and attempted to locate the records pertaining to Mr. Hedrick?

A. I say I believe they have them, yes, sir.

Q. I ask you, Mr. Skrupa, whether you went over these with your attorneys—

A. I looked them over, yes.

Q. All right, now. You charged Mr. Hedrick an initial fee when he came in, didn't you?

A. No, sir. If you mean that he give me money the day [fol. 152] he came into my office, perhaps he did; I don't know, sir.

Q. Do you misunderstand my question? I am referring to a fee given to you, not money deposited to pay creditors.

A. Sir, we have no initial fee or initiation fee.

Q. Now, Mr. Skrupa, I don't wish to argue with you. I just am trying to bring out for the Court here that when somebody comes into your office you talk to them and try to persuade them that this plan is a good thing for them, you explain the merits of the plan, don't you?

A. That's right, sir.

Q. And, in explaining the merits of the plan, you adver-

tise to get them and then, once they are there, you attempt to sell your product to them, don't you?

A. That's right, sir, we attempt to sell our services.

Q. And you do so in order to get them to employ you to receive money out of their funds periodically and pay you money for distributing it to creditors?

A. That's right, sir.

Q. You aren't authorized practitioners of the law, any of you, are you?

A. No, sir.

Q. You do not explain to people their rights under the [fol. 153] laws of the United States, do you?

A. No, sir, we don't feel that—we feel that, not being practitioners of the law, that that is not our right to do so. We are merely interested in their debt problems, we are not interested in any legal problems that they might have.

Q. You are interested in selling your product, and the product being to ease their mind of worry over their debts, is that it?

A. That's right, and, also, to set up a budget system for them so that, over a period of time, they can get out of debt completely, or partially out of debt, or to the point where they feel they can handle their affairs.

Q. What is the income range of these people who are the ones that you have described as those that had financial troubles?

A. Sir, we have had—it could be anything; it could be from people all the way, earning social security payments, all the way up to fifteen, twenty thousand dollars a year, in the case of some salesmen.

Q. The people on social security, you set up schedules for them, too?

A. Well, some of them would have a part-time job or something. What I am trying to say is that there is no [fol. 154] limitations as to the amount of their income.

Q. Well, now, you have attempted, because—

Judge Huxman: Now, Mr. Counsel, we have been rather liberal in allowing questions, but the Court feels that this line of questioning has very little value in determining the

fundamental question we are going to have to answer. It is conceded that they do this as a business and for profit, and that people come in for the purpose of having their debts adjusted. They make deposits which are distributed to creditors. Now, isn't that about it?

Mr. Sanborn: I'm sorry, I'm not getting my point across to the Court.

Judge Huxman: What are you trying to develop with this testimony?

Mr. Sanborn: I am trying to develop what they do and have the Court—in our argument, we will certainly expand on what they do not do.

Judge Huxman: I thought the witness had clearly testified what they did, they advertised, and that people in distress came to them and they worked out a plan for them and arranged for weekly or monthly deposits to be dis-
[fol. 155] tributed according to the plan, isn't that their business, and collect a fee for it?

Mr. Sanborn: Yes, that is true.

Judge Huxman: Well, isn't that about the business?

Mr. Sanborn: Yes. I was just trying to get the foundation laid, because I wanted to ask him some—

Judge Huxman: Don't pursue it too far, because I think there is no question about the nature of their business.

Mr. Sanborn: Yes, Your Honor.

By Mr. Sanborn:

Q. At our request, before their hearing did you attempt to analyze your business records with regard to how many people signed up with you, but the plans were abandoned within a period of 60 days?

Judge Huxman: Speaking for myself, I fail to see that that has any relevancy whatever. I don't see how—

Mr. Sanborn: May I state the grounds, then, Your Honor, because I know I'm not getting across.

Judge Huxman: All right, state the reason.

[fol. 156] Mr. Sanborn: We think, Your Honor, that the evidence will show that—just what our legislature is trying to guard against in the exercise of its police power by what happens with their plans and as to the—frankly, a Kansas

case upon which we rely and a—which is Depew v. Wichita Association of Credit, and a Massachusetts case upon which we rely, which is the Boston Bar Association v. Home Budget Service, this type of evidence is what the Court considered in arriving at its conclusions that the defendant was, in each instance, engaged in the unauthorized practice of law, and it was just this type of—

Judge Huxman: How many of these plans were abandoned won't show whether they were engaged in the practice of law or not, would it?

Judge Hill: Are you trying to show bad faith on the part of this man?

Mr. Sanborn: We are trying to show, without going into the personal good or bad faith of the individuals, we are trying to show that the plans are bad for the people of Kansas and they don't have—they can't—well, I'm getting into an argument, now, but the fact is that the absence of giving people legal advice that are in a lot [fol. 157] of trouble and can't pay their debts, and the absence of advising about wage earners' plans and bankruptcy laws is a very bad thing for people.

Judge Huxman: It may be, but it surely couldn't be claimed that is practicing law, failing to give advice, would it? It might be bad.

Mr. Sanborn: Yes, sir, certainly. Judge Huxman, I would like to take a minute here. This is the whole point of the cocoanut, the whole point of the case, the very point of it, that a man who gets people—lawyers don't advertise, Your Honor, but they practice law, and part of their practice of law is helping people out with financial troubles, and most clients who come through the county attorney's office, I don't know about Mr. Coulson's office, but most who come through our office, have a lot of financial troubles, and a person who reaches out and gathers in these people, by advertising, to his office, and causes them, sells them on, getting a contract with him, when their problem may very well be that they need to get under a wage earner's plan, or they may need to go into bankruptcy, or they may need to [fol. 158] contest some unwarranted claim that has just got them sick with worry, which they, in this transcript that shows, they don't even attempt to go into, is certainly

not only an encroachment on the practice of law, it is an encroachment upon the stability of the general welfare of the people of Kansas, which the state has a right to protect, and, as the Massachusetts Court said in their case, it is every bit as bad that they don't advise people about their total problem, because they are not equipped professionally to do it, as that—

Judge Huxman: Go ahead and develop it, but don't go into it in great detail, because, to me, it has no value. I have clearly in mind the plan or scheme under which they operate. There is no question about that. That's been developed. How many plans fail, we don't care about that.

Judge Hill: I think it is the very contention of the plaintiff that they do not give any legal advice.

Mr. Weigand: It is, Your Honor.

Judge Hill: They admit just what you say, even though [fol. 159] these people may need or desire legal advice, the plaintiff admits that they give no legal advice, so I think we can assume that.

Mr. Coulson: May I add a word here, Your Honor? Judge Hill has, perhaps, seen the exhibits which were offered at Wichita, I don't know whether the other Judges have or not. These contracts into which the debtors enter provide for a minimum fee of $25. We think the evidence will show that it is not disclosed to the prospective client, as they call him, the debtor, what consequences will occur if the plan fails, and that the usual situation is that the debtor comes in, is charged a fee of $25, the plaintiff sends out form letters to his creditors, his creditors forthwith issue garnishments, and that is the end of the plan, and the plaintiff has the $25. That is what we think the evidence will show.

Judge Huxman: That may be wrong, but does it constitute practicing law?

Mr. Coulson: It doesn't make any difference whether it constitutes the practice of law or not, Your Honor. The question is whether it is a practice which the legislature of Kansas can forbid.

[fol. 160] Mr. Weigand: May I submit, Your Honor, there is nothing in the text of this act that goes to what

counsel has just stated, and it is obvious, from the very simple reading of the act.

Mr. Sanborn: We are not dealing with law in a vacuum, Your Honor, we are dealing with law as it affects people.

Judge Stanley: Aren't you handling this now as though you were prosecuting for violation of this act already and attempting to show bad faith on the part of this witness? Here is an act here that says debt adjusting, which defines it, is unlawful. Now, if there is such a thing as debt adjusting which may properly be done and debt adjusting as you seem to contend this man does it, I don't see how that would enter into the question we have to decide today. I think we are here to decide whether an act which makes unlawful any business, without going into whether that business is properly conducted or not, is a violation of the Federal Constitution.

Mr. Coulson: Your Honor, if he is engaged in a continuing fraud, do you say that you are not to take that [fol. 161] into consideration in determining whether he has a business which is entitled to protection?

Judge Stanley: Isn't this action an action designed to determine whether this act, whether it is this individual or any other individual, whether this act is, in itself, constitutional under the provisions of the Fourteenth Amendment? Now, here, it seems to me, we are going here into a question of whether this man conducts a business in the way in which it should be conducted.

Mr. Coulson: I think what we are going into is what the legislature went into in determining the act should be passed, and what we are concerned with here is the reasonableness of that determination.

Judge Huxman: Here is what the act prohibits: It makes it unlawful for anybody to engage in the business of debt adjustment, and then exempts those engaged in the practice of law, isn't that the spirit of the act?

Mr. Coulson: This man asked to have his business—

Judge Huxman: Have I correctly interpreted what the act provides?

Mr. Coulson: Yes, except "debt adjusting" is not defined [fol. 162] in the act. This man objects to disclosing what debt adjusting consists of, as he practices it.

Judge Huxman: Here is what the act says, in plain words: "Whoever engages in the business of debt adjustment shall be guilty of a misdemeanor". That doesn't make any difference, whether he engages in it in good faith or whether he is guilty of fraud in the carrying on of that business, "Whoever engages in the business of debt adjustment shall be guilty of a misdemeanor and, upon conviction", it sets out the penalty, and then it says, "Provided that the provisions of this act", debt adjustment, "shall not apply to those situations involving debt adjustments engaged in in the practice of law". That is all we are concerned with. We are not concerned with whether they are guilty of fraud in debt adjustment or not.

Mr. Coulson: The evidence is offered to show you what the business of debt adjusting consists of.

Judge Huxman: That's been quite clearly established.

Mr. Coulson: Oh, no, oh, no, only from the standpoint [fol. 163] of what that party wants you to hear.

Judge Huxman: He is asking this witness how many of these plans fail.

Mr. Sanborn: Your Honor, you see, they got up and gave you a very glowing account of this—

Judge Huxman: Let's not say a "glowing account". They didn't give any glowing account. They explained their business in very prosaic and understandable terms, as to what they are doing or attempting to do. Whether they have a right to do that or not, that is our question, but the act specifically says that no one can engage in debt adjustment, putting it in my own words, unless that debt adjustment is done in the lawful practice of the law. Now, that is what the act says, doesn't it?

Mr. Sanborn: Yes, sir.

Judge Huxman: All right. Now, how many plans fail, that is what I am saying, we are going way beyond anything that has any value.

Mr. Sanborn: I can't understand why—

Judge Huxman: Before we proceed with this question, what do you want to show by this line of questioning, fur- [fol. 164] ther? How many plans failed?

Mr. Sanborn: I want to show the experience of it, Your Honor, yes, sir.

Judge Huxman: I think the Court is unanimously of the view that it is not interested in that line of testimony.

Mr. Sanborn: This is one of the things we asked them to look up before trial.

Judge Huxman: You may have asked them to look up a lot of things we don't think are competent.

Mr. Coulson: Your Honor, I think—

Mr. Sanborn: May I read from this New Jersey case, so we can—it states the position better than I can, Your Honor.

In this American Budget Corporation v. Furman, which is in the advance sheets of the Atlantic Reporter, 170 Atlantic (2d), on Page 63, in which these same constitutional questions were raised by the American Budget Corporation, these same Federal questions were raised, the Court, in going into this type of questioning, said, "The legislature could have concluded that, while some debt ad-
[fol. 165] justers performed a commendable service, many others committed frauds and abuses and added little to the smooth functioning of the economy, serving mainly to increase the burden of debt upon the typical user of consumer credit who invokes their aid, without substantially furthering his attempts to liquidate his pre-existing obligations. Suffice it to say that the legislature presumably has weighed all of the information at hand before resolving the question of the need for prohibitory legislation.

"It is possible to quarrel with almost any legislative decision, but debatable questions as to reasonableness are not for the Courts, but for the legislature, which is entitled to form its own judgment.

"Judicial interference in this regard would constitute an invasion of the legislative function. Judicial interposition may be had only where there is no real or substantial relation between the legislative act and a valid public interest under the police power or the measure is, beyond all question, a palpable invasion of rights secured by the organic law. The expediency of the statute is for the law-making
[fol. 166] body alone.

"The challenge to the validity of the statute under consideration, on the ground that it denies the equal protection of the laws, is, in effect, an assertion that the clas-

sification imposed by the legislature is unreasonable. The burden of demonstrating that a statute contravenes the equal protection clause is extremely formidable, as is attested by the long trail of failure. In addition to the strong presumption of constitutionality with which all organic challenges are approached, one who assails a statute on this ground must contend with principles of unusual elasticity."

And I am just trying to follow what the Court put in this judgment.

Judge Huxman: I know, but if you would want to show that this person—that there has been a lot of fraud, I don't know what effect it would have, but that is not what you are trying to establish. You are trying to establish how many of these plans have failed, and so on. That doesn't show fraud.

Mr. Sanborn: Your Honor, I am getting in trouble here. I don't want to argue with the Court. I thought one of [fol. 167] the things you would be considering was whether or not there was any reasonable relationship to the police power of the state in an act of the legislature, in reaching your decision as to whether this was a constitutional enactment, and that was the purpose, to show both sides of the coin.

Judge Huxman: Yes, but what is the reasonable relation there under the police power? What do you claim the legislature tries to stop here? I don't care what some other Court said about it.

Mr. Coulson: The legislature, Your Honor, has said that this is not a—something that can only be practiced by lawyers. We are trying to offer the testimony to show why they said that, and they could reasonably arrive at that conclusion.

Judge Huxman: This testimony doesn't show why only lawyers should do it, doesn't, to me. The act sets out what constitutes debt adjustment. That is what the act says, "These things constitute debt adjustment". A man might enter into that debt adjustment in the best of faith, carrying it out honestly, fairly, without fraud upon any-[fol. 168] body, but, having defined what that business consists of, the legislature said nobody can do that but lawyers.

Mr. Coulson: No, Your Honor, the legislature did not define debt adjusting. The legislature says the business of debt adjusting is prohibited when any of these acts are done.

Judge Huxman: Wait a minute, here is what the act says itself: "For the purpose of this act, 'debt adjustment' means", and then it says what debt adjustment is.

Suppose we give the reporter a recess and the Court a little time to get out of its fog and come back in about ten minutes.

(Thereupon, at the hour of 3:00 o'clock, p.m., the Court took a brief recess.)

Judge Huxman: Gentlemen, here is the way the Court feels about this line of testimony. I will say, for myself, at least, I doubt that there is a disagreement, we fail to see too much relevancy in this testimony. We don't want to shut anybody off, but, if the object is to develop the general nature of the operation of this business, if that is what you are trying to do, how many plans failed and [fol. 169] how many paid out, those ultimate facts, that you ought to be able to stipulate and agree to that, rather than detailed examination. Is that what you are trying to develop, Mr. Attorney?

Mr. Sanborn: Yes, sir, that is a part of it.

Judge Huxman: What else are you trying to develop?

Mr. Sanborn: Well, we would like to develop when they collect the fee and what they do next.

Judge Huxman: For what purpose? What is the object of eliciting—I am asking for my own information.

Mr. Sanborn: The purpose of that is because we think that this will clearly show to the Court that the man gets the ad and then he comes in, and they explain the plan and collect the payment, and then they go out and call the creditors, and all the creditors swarm down on the man and he gets garnishments, and then the initial payment is retained. We think—I am giving you hearsay from another lawyer, that that happened to his client.

Judge Huxman: You are what?

[fol. 170] Mr. Sanborn: A lawyer had this happen to his client.

Judge Hill: I think, if you have a specific fact that you want to prove, I see—counsel probably will stipulate and agree to it, if you have specific cases. He won't stipulate to the conclusion, I doubt that.

Mr. Coulson: We would be glad to ask them, as counsel questions and see whether we can agree, but they haven't furnished us with any information. They've got it present here, and we are trying to bring it onto the record in some fashion. We don't care how it's done.

Judge Stanley: I gather from what has been said here that there had been a request made of counsel to bring here today certain information, is that correct?

Mr. Sanborn: Pertaining to certain named plans or certain named debtors.

Judge Hill: How many?

Mr. Coulson: Four.

Judge Hill: Take them one at a time and ask him.

Mr. Sanborn: I asked about the Hedrick, and then we have Nickerson.

[fol. 171] Judge Huxman: Take each of these four and ask the witness about it, briefly.

Judge Hill: Or ask counsel if he will stipulate to that.

Mr. Coulson: He didn't give us the information, they haven't furnished us with anything.

Judge Huxman: You have the information on those sheets, haven't you, Mr. Coulson, as you claim the facts are?

Mr. Coulson: No, we have to elicit from this witness—we know the experience lawyers have had, but what—what their clients come in and tell them, but this is the only one who can testify to it. He has the records.

Judge Huxman: If you have a particular case, why don't you ask this witness if he knows about that case?

Mr. Weigand: Might we, for the record, Your Honors, state the position of the plaintiff: We have brought into court, at the request of counsel, four files with respect to four people with whom the Wichita office made contracts. We have those files, but we would point out—will be glad [fol. 172] to give them to Court and counsel to look at, but it is the position of the plaintiff that this law does

not deal with the performance of these contracts, that the law prevents the making of a contract—

Judge Huxman: I understand, but we are now dealing with the introduction of those files, the substance of those files, in evidence, aren't we?

Mr. Weigand: We will be glad to give them the files.

Judge Huxman: Why can't you agree as to what those files show without admitting the conclusions they seem to draw? That is what you want.

Mr. Sanborn: Don Farnum, 4270 East Boston, is one of them.

Mr. Weigand: Here is that file.

(Handed to counsel.)

Mr. Sanborn: Are you familiar with this Farnum file, have you reviewed it?

The Witness: Sir, I have looked at it very briefly. If you would show it to me again, I will try to help you.

Mr. Sanborn: I am afraid I'm getting—may I ask these [fol. 173] four files be furnished to some of the other counsel here, and let me go on and conclude my brief examination, and we will save time that way.

By Mr. Sanborn:

Q. Have you previously been advised by Judge Kline in the District Court of Sedgwick County, Kansas, that your business—and prior to the enactment of this statute, that your business, as conducted by you, after the Court asking you some questions during the course of that lawsuit, did constitute the unauthorized practice of law in the State of Kansas?

Judge Huxman: Wait until you answer that question. Counsel wants to make an objection.

Mr. Weigand: To which the plaintiff objects on the ground of incompetency, doesn't tend to prove or disprove any issue before the Court and is not persuasive in any way, shape or form as to whether or not this act is constitutional.

Mr. Sanborn: I have a case on that point of law, Your Honor.

Judge Huxman: Is that an adjudication that Judge Kline made, or just advice he gave?

[fol. 174] Mr. Sanborn: It was an adjudication and decision.

Judge Huxman: Well, you can ask him whether Judge Kline adjudicated that.

The Witness: Pardon me, Your Honor. The definition of "adjudication", please.

Judge Huxman: He asked you if, in a certain case, if Judge Kline didn't adjudicate that your acts constituted the illegal practice of law. They could introduce the judgment, that would be the best evidence, I suppose; if you know such an adjudication was made, I presume you may answer. Do you know whether Judge Kline so adjudicated?

The Witness: By that alleged, sir.

Judge Huxman: Didn't he, in a case pending, make a judicial adjudication?

The Witness: I don't know the term.

Judge Huxman: Rendered a judgment to that effect.

Mr. McRae: I represented Mr. Skrupa at that time, before Mr. Weigand and Mr. Bell were in the case. This was a case which I filed on behalf of Mr. Skrupa to enjoin [fol. 175] an employment of a man by the name of Gordon Oliver, who was employed by us, who later went to a competitor of ours. Our reason for firing him was the fact that he had absconded with funds. My prayer was for—enjoined him from going into competitive work. This evidence that was offered was only offered on the basis of what this man—what we had trained him and what he had done. Judge Kline, after hearing the facts of the case relevant to this employment, stated that Mr. Skrupa had not come into that court with clean hands, that he, not only as a Judge of the 18th Judicial District, but as president of the Sedgwick County bar, stated that he believed this man was practicing law and that his business was of that nature, and that he was not entitled to this equitable remedy. I took an appeal from that decision, the man was later fired by our competitor, I felt the case was moot, and I did not take it on to the supreme court. That's the full facts of that case, Your Honor.

Judge Huxman: Is that decision by Judge Kline a part of the judgment?

Mr. Sanborn: Yes, sir.

Judge Huxman: Well, introduce the judgment.

[fol. 176] Mr. Sanborn: We are having it marked now, Your Honor.

Judge Huxman: You may introduce it, Judge Kline's judgment; it will speak for whatever it says, and then we will consider the relevancy of it.

Mr. Sanborn: Thank you, Your Honor.

By Mr. Sanborn:

Q. Mr. Skrupa, this was before the 1st day of July, 1961, wasn't it?

A. That's right.

Q. And it was before the effective date of the statute which you are now attacking—

A. Correct.

Mr. Sanborn: Judge, stop me if you have already ruled on this.

By Mr. Sanborn:

Q. What do you do when you call up these creditors, if the creditors just refuse to go along with your proposal for this debtor?

A. Well, sir, my personal experience is that we don't have any creditors that refuse to go along with it.

Q. You don't have any that refuse to go along with it?

A. That's right. Sometimes it takes a bit of persuasion, but usually we can work it out.

[fol. 177] Judge Huxman: A littled louder.

The Witness: Sometimes it takes a little persuasion, some talk back and forth between us and the creditors, but usually we can work it out.

By Mr. Sanborn:

Q. You negotiate for your client, then, with the creditor until you get it worked out?

A. Yes, sir.

Q. What use do you make of the power of attorney which is in evidence as Defendants' Exhibit F?

A. Sir, when that was in use, and it no longer is, we never made any use of it.

Q. Mr. Skrupa, I want to be perfectly clear about your testimony. Did you intend to testify that substantially all of the creditors go along with your proposals?

A. Yes, sir. After all, if they didn't, we wouldn't be in business.

Q. And do you have in mind that you testified in a previous hearing before Judge Hill as to the subject matter of people not going along with your credit—creditors not going along with your plan?

A. Are you referring to the testimony—

Q. In this transcript you offered.

A. I don't recall, sir, I'm sorry; you would have to point [fol. 178] it out to me. I'm not sure what you are talking about.

Q. Well, what do you do when they won't go along with the plan?

A. Sir, we don't do anything. This doesn't happen. Through experience, we know what creditors will do and what they will not do. And, if they should refuse for some reason, which wouldn't happen in one case out of a thousand, to take the payments from us, we merely tell the debtor to make some arrangements on his own, to go over there and try to straighten it out.

Q. And what do you do with the money that has been turned over to you by the creditor which you have now and—pardon me, the debtor, and have unsuccessfully offered to the creditors?

A. You are saying "creditors", sir. A moment ago it was "creditor".

Q. I'm not trying to mislead you. I want to know, in a situation where the creditor doesn't go along, what you now, at this point, do with the money that you have collected from the person who is in debt.

A. We disburse it to the other creditors, and then we would probably reduce his payment to take into account that this other creditor didn't go along with it. Under- [fol. 179] stand, this is a very rare thing when this hap-

pens, and I am not alleging that this is common practice of ours.

Q. Well, suppose—does it happen that you have these people that are your clients and the creditors don't agree to your terms, and they file suit against them and issue garnishments?

A. It's happened they have been garnisheed, yes, sir.

Q. What do you do in that event?

A. We try to work it out.

Q. Well, how do you go about working it out, after the—the creditor has garnisheed the defendant? How do you go about working it out?

Judge Huxman: Mr. Attorney, I fail to see any relevancy to that question. If my associates agree, you can have an answer.

By Mr. Sanborn:

Q. With whom do you attempt to work it out?

A. The creditors, sir.

Q. You don't lend money to these people, do you?

A. We do not lend money, sir. We occasionally have advanced them money, but under no circumstances is it a loan with interest being drawn. By that I mean, if we have a payment to meet and the man gives us $30 and his car pay- [fol. 180] ment is $31.27, we may advance him this $1.27.

Q. Well, since you loan him no money, what is the occasion for—what are you getting at in your ad about that he needs no co-signers?

A. Sir, we don't want to be confused with a loan company. That is why that is in the ad. Our ad also states we are not a loan company. Maybe that one doesn't, but most of them do.

Q. And what do you mean the person to gather from your statement in your ad, "No security"?

A. Sir, I think that speaks for itself, "No security", no security.

Q. You are familiar with the commercial word, aren't you, Mr. Skrupa?

A. To some degree.

Q. And you are familiar—

Mr. Weigand: May I call the Court's attention to the fact, and I think Mr. Sanborn will have to agree with me, that he asked these same questions and got these same answers in the transcript, and we were only to amplify it and not duplicate it. Isn't that correct, Mr. Sanborn?

Mr. Sanborn: I didn't recall it, as such, or I wouldn't have repeated anything. If counsel recalls it, Your Honor, [fol. 181] certainly, I have no reason to believe that his memory is faulty and I won't ask anything further along that line.

Judge Huxman: Are you offering this exhibit in evidence?

Mr. Sanborn: Yes, sir, after I have the witness identify it and offer it to adverse counsel.

By Mr. Sanborn:

Q. I hand you what has been marked by the Clerk for identification as Defendants' Exhibit I, consisting of two pieces of paper. Do you recognize those as being your business forms?

A. Yes, sir.

Q. What is the smaller thing in the form of a receipt? Is that one of your regular—

A. That is a receipt, yes, sir.

Q. And do you keep duplicate receipts in your record keeping?

A. Yes, we do.

Q. Do you recognize—is this a plan on Exhibit I, or what is this called, these figures of yours? Is that a work sheet?

A. No, sir, I have no idea what this is or who wrote it. It is on our form, but I wouldn't say who wrote it; I don't know.

Q. Well, do you make lists of the indebtedness?

[fol. 182] A. Yes, sir, but not on this kind of sheet. We have a specific form for that.

Q. You do have a certain method of figuring it out, don't you?

A. Certainly, certainly.

Q. And would you look at these figures under Listed